

BIENNIAL REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF NORTH CAROLINA

VOLUME 36
1960-62

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BIENNIAL REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF NORTH CAROLINA

VOLUME 36
1960-62

THOMAS WADE BRUTON
ATTORNEY GENERAL

HARRY W. MCGALLIARD

PEYTON B. ABBOTT

RALPH MOODY

KENNETH F. WOOTEN, JR.*

F. KENT BURNS*

LUCIUS W. PULLEN

H. HORTON ROUNTREE*

GLENN L. HOOPER, JR.*

THOMAS L. YOUNG*

HARRISON LEWIS

G. ANDREW JONES, JR.

CHARLES D. BARHAM, JR.

CHARLES W. BARBEE, JR.

JAMES F. BULLOCK

Assistant Attorneys General

*Resigned

BIENNIAL REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF NORTH CAROLINA

LETTER OF TRANSMITTAL

1 January 1963

To His Excellency

TERRY SANFORD, *Governor*

Raleigh, North Carolina

Dear Sir:

In compliance with Article III, Section 7 of the Constitution, I herewith submit the report of the Department of Justice for the biennium 1960-62.

Respectfully yours,

THOMAS WADE BRUTON,

Attorney General

LIST OF ATTORNEYS GENERAL SINCE THE ADOPTION OF CONSTITUTION IN 1776

	<i>Term of Office</i>
Avery, Waightsill	1776-1779
Iredell, James	1779-1782
Moore, Alfred	1782-1790
Haywood, J. John	1791-1794
Baker, Blake	1794-1803
Seawell, Henry	1803-1808
Fitts, Oliver	1808-1810
Miller, William	1810-1810
Burton, Hutchins G.	1810-1816
Drew, William	1816-1825
Taylor, James F.	1825-1828
Jones, Robert H.	1828-1828
Saunders, Romulus M.	1828-1834
Daniel, John R. J.	1834-1840
McQueen, Hugh	1840-1842
Whitaker, Spier	1842-1846
Stanly, Edward	1846-1848
Moore, Bartholomew F.	1848-1851
Eaton, William	1851-1852
Ransom, Matt W.	1852-1855
Batchelor, Joseph B.	1855-1856
Bailey, William H.	1856-1856
Jenkins, William A.	1856-1862
Rogers, Sion H.	1862-1868
Coleman, William M.	1868-1869
Olds, Lewis P.	1869-1870
Shipp, William M.	1870-1872
Hargrove, Tazewell L.	1872-1876
Kenan, Thomas S.	1876-1884
Davidson, Theodore F.	1884-1892
Osborne, Frank I.	1892-1896
Walser, Zeb V.	1896-1900
Douglas, Robert D.	1900-1901
Gilmer, Robert D.	1901-1908
Bickett, T. W.	1909-1916
Manning, James S.	1917-1925
Brummitt, Dennis G.	1925-1935
Seawell, A. A. F.	1935-1938
McMullan, Harry	1938-1955
Rodman, William B., Jr.	1955-1956
Patton, George B.	1956-1958
Seawell, Malcolm B.	1958-1960
Bruton, Thomas Wade	1960-

LIST OF ATTORNEYS GENERAL UNDER THE AUGUST 1901 CONSTITUTION IN THE

Year	Attorney General
1892	John W. Adams
1893	John W. Adams
1894	John W. Adams
1895	John W. Adams
1896	John W. Adams
1897	John W. Adams
1898	John W. Adams
1899	John W. Adams
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2011	John W. Adams
2012	John W. Adams
2013	John W. Adams
2014	John W. Adams
2015	John W. Adams
2016	John W. Adams
2017	John W. Adams
2018	John W. Adams
2019	John W. Adams
2020	John W. Adams
2021	John W. Adams
2022	John W. Adams
2023	John W. Adams
2024	John W. Adams
2025	John W. Adams

EXHIBIT I

CIVIL ACTIONS PENDING IN STATE AND FEDERAL COURTS DURING THE BIENNIUM 1960-62:

*Number of
Cases*

PENDING IN THE SUPERIOR COURT OF NORTH CAROLINA

State Taxes	18
Motor Vehicle Drivers' Licenses	17
Condemnation Proceedings	752
Utilities Commission Cases	13
Beer and Wine License Revocations	13
Other	63
TOTAL	876

PENDING IN THE SUPREME COURT OF NORTH CAROLINA

State Taxes	2
Other	8
TOTAL	10

PENDING IN THE UNITED STATES DISTRICT COURTS

State Taxes	6
Other	4
TOTAL	10

PENDING BEFORE U. S. FEDERAL TRADE COMMISSION

Other	2
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CIVIL CASES DISPOSED OF DURING THE BIENNIUM 1960-62

In the Superior Court of North Carolina	542
In the Supreme Court of North Carolina	26
In the Supreme Court of the United States	10
In the District Courts of the United States	18
Before the North Carolina Industrial Commission ..	700
Before the Interstate Commerce Commission	1
Habeas Corpus Petitions Disposed of in the Superior Court	316
Habeas Corpus Petitions Disposed of in the Federal District Court	41
TOTAL	1,654

EXHIBIT II

CRIMINAL CASES DISPOSED OF IN THE NORTH CAROLINA SUPREME COURT DURING THE BIENNIUM 1960-62:

Abandonment-Nonsupport	6
Accessory before the Fact of Felonious Maiming.....	1
Assault	3
Assault with Deadly Weapon	5
Assault with Intent to Rape	4
Breaking-Entering-Larceny-Receiving	10
Crime Against Nature	1
Damage to Real Property	1
Delinquent Child Committed to Training School	1
Embezzlement	1
Felonious Burning of Property	1
Forgery	2
Fornication-Adultery	1
Gambling	1
Kidnapping	1
License Violation	1
Manslaughter	12
Murder First Degree	12
Murder Second Degree	6
Obscene Literature	1
Peeping Into Room Occupied by Woman	1
Perjury	2
Rape	6
Robbery	1
Seduction	1
Shoplifting	1
Suicide Attempt	1
Theft	1
Trespass	3
Uniform Reciprocal Enforcement of Support Act	1
Violating Liquor Laws	17
Violating Motor Vehicle Laws	4
Violating Professional Bondsman Law	1
Violating Rules of the Road	15
Violating Suspended Sentence	1
Worthless Check	1
TOTAL	128

Number of Cases dismissed on motion during the Biennium 1960-62	4
Number of Petitions for Writ of Certiorari denied during the Biennium 1960-62	120
Number of Petitions for Writ of Certiorari allowed during the Biennium 1960-62	5
Number of Petitions for Writ of Habeas Corpus denied during the Biennium 1960-62	13
Number of Petitions for Writ of Mandamus denied during the Biennium 1960-62	3

FEES TRANSMITTED BY THE ATTORNEY GENERAL TO THE
STATE TREASURER DURING THE BIENNIUM 1960-62 ...\$605.00

SUMMARY OF ACTIVITIES

STAFF PERSONNEL

There have been very few changes in the staff personnel since the publication of the Biennial Report of 1958-60.

Attorney General T. W. Bruton and Assistant Attorneys General Harry W. McGalliard, Peyton B. Abbott, Ralph Moody, and Lucius W. Pullen served throughout the biennium.

Assistant Attorneys General who were serving at the close of the biennium are as follows: Harry W. McGalliard, Peyton B. Abbott, Ralph Moody, Lucius W. Pullen, Harrison Lewis, G. Andrew Jones, Jr., Charles D. Barham, Jr., Charles W. Barbee, Jr., and James F. Bullock.

At the close of the biennium Harold D. Coley, Jr. was serving as Revisor of Statutes.

Staff Attorneys who were serving at the close of the biennium are as follows: Parks H. Icenhour, Ray Brady, William R. Pierce, Richard T. Sanders, George E. Clayton, Jr., Theodore C. Brown, Jr., John C. Daniel, Jr., Andrew McDaniel, Edwin S. Preston, Jr., Millard R. Rich, William W. Melvin, Henry Thomas Rosser, and George A. Goodwyn.

Members of the secretarial staff who were serving at the close of the biennium are as follows: Miss Elizabeth N. Flournoy, Mrs. Jean C. Spence, Miss Aida Epps, Mrs. Frances E. Gill, Mrs. Carolyn D'Alio, Mrs. Katharine L. Dowd, Mrs. Cleo A. Purcell, Mrs. Colleen G. Hinton, Miss Judy Edwards, Mrs. Alice Gorham, Mrs. Edna B. Jerome, Mrs. Helen W. Bagwell, Mrs. Barbara C. Owens, Mrs. Eunice Murphy, Mrs. Shirley Capps, Mrs. Ruby Rickman, Mrs. Grace Gardner, Mrs. Mary H. Green, Mrs. Eunice Moore, Miss Shirley White, Mrs. Marilyn Lee, Mrs. Annie Lou Cahoon, Mrs. Frances Regan, Mrs. Betty Sue Jeffreys.

HIGHWAY DIVISION OF ATTORNEY GENERAL'S OFFICE

During the past biennium the Attorney General, in the discharge of his responsibilities to represent the State Highway Commission, its Chairman and Director, has handled a work load of considerably increased volume over that of the previous biennium. This volume is due in part to construction under the Interstate Highway Program and in part to the new condemnation procedure enacted by the 1959 Session of the General Assembly, effective July 1, 1960, under which the Commission is required to institute condemnation actions in the Superior Court on those matters which have not been settled prior to the letting of the contract for construction.

At the close of the previous biennium, 261 condemnation cases were pending under the old procedure. Although additional suits have been filed on claims pending under this procedure throughout the biennium, the total number pending as of July 1, 1962, has been reduced to 161.

During the period July 1, 1960, the effective date of the new condemna-

tion procedure, to July 1, 1962, 702 condemnation suits were filed on behalf of the Commission under the new procedure; 591 of these suits were pending as of July 1, 1962.

During the biennium, a total of 345 condemnation cases were disposed of, of which 70 were terminated by jury trials in the Superior Court. The balance were settled either prior to or during trial. It is anticipated that a larger number of suits under the new procedure will reach trial than was previously the case.

The State Highway Commission has been represented in the Supreme Court in 5 cases during the period by members of this staff. At the conclusion of the biennium, there were no cases involving the State Highway Commission pending in the Supreme Court.

During the biennium, the members of this staff participated with the administrative personnel of the Highway Commission in the determination of an increasing number of claims brought by Highway contractors arising out of the contract work carried on by the Commission, as well as the adjustment of claims for damage to Commission property and other miscellaneous matters.

In addition, members of the staff have drafted, reviewed, or approved approximately 12,000 leases; deeds; right-of-way claims; encroachment contracts; miscellaneous agreements with utilities, railroads, municipalities and other governmental agencies; and construction contracts.

Throughout the biennium, the staff has had the very complete cooperation of the State Highway Commission, its Chairman, Director and administration in the prosecution of the Attorney General's work for the State Highway Commission.

TORT CLAIMS AND WORKMEN'S COMPENSATION

The State Tort Claims Act, which was enacted in 1951, imposed upon the Attorney General the duty of representing the various State departments, institutions and agencies, with the exception of the State Highway and Public Works Commission. In 1957, when the Highway and Public Works Commission was separated by the General Assembly, the Attorney General assumed the duty of representing this department in like manner.

During the biennium from July 1, 1960, to July 1, 1962, a total of 300 tort claims were filed against the various departments, institutions and agencies of the State. Approximately 75% of this number were handled by the Attorney General. About one-half of these were settled, and the remainder were heard before the North Carolina Industrial Commission, as provided by law.

In 1959, the General Assembly enacted a statute requiring all departments, institutions and agencies of the State to acquire liability insurance on all State-owned motor vehicles. (Chapter 1248, Session Laws, 1959). The effective date of this Act was July 1, 1959.

As a result of this Act an undetermined number of tort claims against the State, in which State-owned motor vehicles were involved, were settled

by the insurance carrier for the various departments, institutions, and agencies during the second half of the biennium.

In addition to its duty of representing the various departments, institutions and agencies of the State in claims filed under the Tort Claims Act, the Attorney General represents the State in disputed Workmen's Compensation claims filed by State employees. During the past biennium approximately 400 disputed claims involving State employees were heard by the Commission.

DIGEST OF OPINIONS

AGRICULTURE

8 February 1961

AGRICULTURE; FERTILIZERS; STOP SALE ORDERS TO WAREHOUSE OFFERING UNREGISTERED GRADES

Unregistered commercial fertilizers may not be sold in North Carolina except as provided under GS 106-50.11, which permits one and only one grade of "specialty fertilizer", which may be unregistered, to be sold. The Commissioner of Agriculture has the duty to issue a stop sale order upon a finding that a person having custody of an unregistered lot of commercial fertilizer is offering more than one grade for sale. If only one grade of unregistered fertilizer is stocked, sales of such grade as a "specialty fertilizer" are permitted.

9 August 1960

AGRICULTURE; LINSEED OIL INSPECTION LAW; OIL USED IN PAINT-MAKING

If linseed oil is shipped into this State and stored in a warehouse to the shipper's account and is a part of the shipper's inventory in this State and is later withdrawn from the warehouse upon the shipper's orders for use in manufacturing paint, there would be a sale of the oil as such within the State and the oil held in the warehouse in this State would be "offered for sale in the State" within the purview of the Linseed Oil Inspection Law (N. C. G. S. 105-285), and the inspection fees would be due. If, however, the oil is imported by the paint manufacturer and merely stored in a warehouse until needed by the paint manufacturer in its manufacturing processes, the oil as such would not be offered for sale within this State and the inspection law would not apply.

7 December 1960

AGRICULTURE; PUBLIC WEIGHMASTER AT PACKING HOUSES

Where purchases are made by packing companies at their plants and the company scales are used, there should be a public weighmaster duly licensed under G. S. 81-36 in order to comply with G. S. 81-14.1.

ABC BOARD

8 May 1962

ABC BOARD; COUNTY ABC BOARD; GROUP ACCIDENT AND HEALTH INSURANCE; EMPLOYEES OF COUNTY ABC BOARD AND THEIR DEPENDENTS

County ABC Board is not authorized to purchase group insurance covering dependents of its employees; however, certain benefits payable to the employee on account of hospitalization or medical treatment of his dependents may be provided in a group accident and health policy. (G. S. 58-254.4(f))

6 November 1961

ABC BOARD SUBJECT TO MINIMUM WAGE ACT; ABC NET PROFITS

Local county ABC board is not subject to Minimum Wage Act, Article 11 of Chapter 95 of the General Statutes.

County ABC board may, in its discretion, expend for education as to the effects of the use of alcoholic beverages and for the rehabilitation of alcoholics, not more than 5% of its total profits. G. S. 18-45. Total profits are total receipts less general operating expenses. Amounts required to be expended for law enforcement and retained as sufficient and proper working capital are not general operating expenses.

APPROPRIATIONS

22 September 1961

APPROPRIATIONS; CAPITAL IMPROVEMENT; EXPENDITURE OF RENTAL; RECEIPTS THEREFOR

Rental receipts may not be used by a State Commission to increase an appropriation for Capital Improvements.

1 March 1961

APPROPRIATIONS; CONTINGENCY AND EMERGENCY FUND; NORTH CAROLINA CONFEDERATE CENTENNIAL COMMISSION; ELIGIBILITY FOR APPROPRIATION

Where a commission is authorized to apply to the Governor and Council of State for allotments from the Contingency and Emergency Fund to defray the costs of necessary expenses incident to its operation, this authority continues for the life of the commission even though the commission's existence may extend beyond the biennium in which the authority was granted.

10 March 1961

APPROPRIATIONS; CONTINGENCY AND EMERGENCY FUND; ROANOKE
ISLAND HISTORICAL ASSOCIATION; ELIGIBILITY FOR APPROPRIATION
TO DEFRAY COST OF REBUILDING AMPHITHEATER

G. S. 143-204 provides that the Roanoke Island Historical Association, Incorporated, may apply for an allotment from the Contingency and Emergency fund in those years in which "The Lost Colony" operates at a deficit during the preceding season. While the drama "The Lost Colony" operates at a profit the Association is not eligible for an allotment from the Contingency and Emergency Fund.

ARCHIVES AND HISTORY

23 September 1960

ARCHIVES AND HISTORY; CONTROL OF ERECTION OF PRIVATE
HISTORICAL MARKERS

Under G. S. 121-2 and Chapter 341, Public Laws 1941, Section 2, the State Department of Archives and History and the Memorials Commission do not have authority to prevent groups from erecting private historical markers on the Highway right-of-way. However, the State Highway Commission has authority to prevent groups from erecting such markers and also has the authority to remove them from its rights-of-way.

14 August 1961

ARCHIVES AND HISTORY; PUBLICATIONS; SALE OF HISTORICAL
MATERIALS TO OTHER INSTITUTIONS OF THE STATE
AND TO UNIVERSITIES

Publications of the Department of Archives and History, when furnished to other institutions, may be charged for at the reasonable prices fixed for the general sale of such publications.

BANKS

27 September 1960

BANKS; CORPORATIONS; CONSOLIDATION; STOCK HELD IN FIDUCIARY
CAPACITY; COMPUTING OUTSTANDING STOCK

The North Carolina statutes prohibit a corporation from voting shares of its own stock owned in a fiduciary capacity unless a certain judicial procedure is followed. When such prohibition prevents the voting of such shares, then, in that event, such shares are not counted in determining the total number of outstanding shares at a given time.

19 July 1961

BANKS; DEPOSITS; OUT-OF-STATE BANKS; DEPOSITS TO LIQUIDATE
BONDS; SPECIAL SECURITY UNNECESSARY

The provision in G. S. 147-78, requiring depository banks in this State to furnish security for State bank deposits, is not applicable to a bank in New York City designated under G. S. 142-1 to receive funds to be used by such bank's trust department to make payments on State bonds.

24 October 1961

BANKS; INVESTMENTS; SMALL BUSINESS INVESTMENT COMPANIES

There are no North Carolina statutes specifically prohibiting State banks from purchasing stock in a Small Business Investment Company, but the State Banking Department is of the opinion that it is not a good policy for a bank to make such purchases.

13 October 1961

BANKS; JOINT BANK DEPOSITS; HUSBAND AND WIFE; RIGHT OF
SURVIVORSHIP; RIGHTS OF CREDITORS

Under the provisions of G. S. 41-2.1 husband and wife can create a joint bank account by a contract signed by both which gives survivorship rights in case one of the parties dies; survivorship rights in other personal property can also be created by contract but all such survivorship contracts or agreements are subject to the rights of the creditors of the deceased person.

5 October 1961

BANKS; SELLING AND CASHING CHECKS FOR COMPENSATION;
PAYMENT OF UTILITY BILLS

Engaging in the business of cashing checks for compensation in this State does not fall within the purview of the State banking laws.

12 March 1962

BANKS; SMALL LOAN ACT; EXEMPTIONS; MOTOR VEHICLE
LOAN; ADDITIONAL COLLATERAL

A lender is exempt from the Consumer Finance Act if he is "engaged solely in the business of making loans of fifty dollars (\$50.00) or more secured by motor vehicles". If such a lender requires additional collateral besides the motor vehicle, he would lose his exempt status.

15 December 1961

**BANKS; SMALL LOAN LAW; 1961 CONSUMER FINANCE ACT;
REQUIREMENT AS TO LOANABLE ASSETS OF \$25,000.00;
"GRANDFATHER CLAUSE" NOT APPLICABLE**

The "Grandfather Clause" in the 1961 Consumer Finance Act is not applicable to the requirement that a lending agency have a minimum of \$25,000.00 in loanable assets.

25 October 1961

BANKS; TRUSTS; DEALING WITH SELF

A bank is not authorized to make a loan, accept a note together with a mortgage as security therefor, and then proceed to sell a participation share in such investment to the trust department of the bank as trustee for a certain trust.

BIDS; BIDDING

7 February 1961

**BIDS AND BIDDING; PUBLIC CONTRACTS; CLASSES OF
WORK; SEPARATE BIDDING**

The public bidding statutes require that there be separate bids with respect to separate classes of work, *i.e.*, heating, plumbing, electrical installations and air conditioning. However, there is no reason why a person, firm or corporation who is the lowest responsible bidder in more than one subdivision should not be awarded more than one contract provided such person, firm or corporation has the proper legal qualifications for performing the work called for by the award.

BLUE LAWS

21 September 1961

**BLUE LAWS; BUSINESS ACTIVITIES ON SUNDAY; WHEN COUNTIES,
CITIES, AND TOWNS MAY BE EXEMPT FROM THE ACT**

At any time prior to or after October 1, 1961, a county, city, or town may, by resolution, at any regular or special meeting of the board, exempt itself from the provisions of Chapter 1156 of the Session Laws of 1961 relating to business activities on Sunday.

BOATING

30 November 1960

BOATING; LICENSES; STATE LAKES

Regulations of the Division of Parks, Department of Conservation and Development, require that boats operating upon State lakes must be properly licensed, and license fee must be paid, regardless of the ownership of the boats or the use to which they are being put.

BONDS

6 March 1961

BONDS; FIDELITY BONDS; BONDS OF ASSISTANTS TO DEPARTMENT CHIEFS

A county may accept a blanket fidelity bond covering all county employees or a selected group of employees, such as those handling county funds or funds belonging to the public, which bond should run to the board of county commissioners.

8 August 1961

BONDS; FORFEITURE OF RECOGNIZANCE BONDS; AUTHORITY TO REMIT FORFEITED RECOGNIZANCES

A bondsman must apply to the courts under G. S. 15-116 for relief on a forfeited recognizance bond and not to Board of County Commissioners or County Board of Education.

1 August 1960

BONDS; ISSUANCE OF BONDS FOR COMMUNITY COLLEGE PURPOSES WITHOUT A VOTE OF THE ELECTORATE

A board of county commissioners may not issue bonds for community college purposes without a vote of the electorate.

BUILDING AND LOAN ASSOCIATIONS

1 November 1961

BUILDING AND LOAN ASSOCIATION; ADDITION, ALTERATION OR AMENDMENT TO CHARTER

By virtue of G. S. 54-3 any addition, alteration or amendment of the certificate of incorporation of any building and loan association must be

effected as provided in G. S. 54-3 and signed, certified and recorded as provided in G. S. 54-2, including the obtaining of the Insurance Commissioner's approval and the payment of the \$25.00 tax to the clerk.

26 July 1961

**BUILDING AND LOAN ASSOCIATIONS; DIVIDENDS; QUARTERLY
DIVIDENDS NOT AUTHORIZED**

G. S. 54-41.4 expressly provides for the payment of dividends, if any, "semi-annually" in the case of a building or savings and loan association. Therefore, such an association would not be authorized to pay quarterly dividends.

CEMETERIES

13 September 1961

**CEMETERIES; PRIVATE CEMETERIES OPERATED FOR PROFIT;
PERPETUAL CARE**

G. S. 65-26 provides that no person, partnership, association or corporation shall be permitted after March 8, 1943, "to establish a public cemetery for private gain or profit without obtaining a license therefor, as provided in this article, and without providing for the perpetual care of such cemetery in accordance with the terms of this article . . ."

CHARITABLE INSTITUTIONS

11 October 1960

CHARITABLE INSTITUTIONS; LIABILITY; TORT LIABILITY OF CHURCHES

It appears to be the law in North Carolina that the beneficiaries of a charity cannot sue the charity for the negligence of those employees, but that a charity is liable to suit brought by an employee of a charity or any other non-beneficiary of the charity when such a person has been injured by the negligence of persons employed by the charity. See 19 N. C. L. R. 245, 249 (1941).

CIVIL DEFENSE

15 December 1960

**CIVIL DEFENSE; VOLUNTEERS; WORKMEN'S COMPENSATION;
EMPLOYER - EMPLOYEE**

A person volunteering his services to Civil Defense is not an employee

of the respective Civil Defense Agency within the meaning of the Workmen's Compensation Act, the essential prerequisite, the relationship of employer-employee, being absent.

18 November 1960

CIVIL DEFENSE; WORKERS ASSISTING LOCAL POLICE IN NORMAL
TIMES; DEPUTY SHERIFFS; WORKMEN'S COMPENSATION

A civil defense worker is not doing civil defense work when he is assisting in administrative police duties. Civil defense commences only in time of emergency and disaster. A city has no authority to use civil defense workers in their capacity as civil defense workers to enforce local law in normal times. A civil defense worker may consent to be sworn as a deputy sheriff but at such time become an employee of the county or governing body but only during the period in which he is actually working in a deputy sheriff's capacity. As a deputy sheriff he is subject to the statutory provisions governing sheriffs and as an employee of the county or governing body he falls within the purview of the Workmen's Compensation Act. G. S. 166; G. S. 162-1 et seq; G. S. 97-2(2).

CIVIL PROCEDURE

22 November 1960

CIVIL PROCEDURE; CIVIL ACTIONS; SERVICE OF PROCESS;
SERVICE BY PUBLICATION; AFFIDAVIT

In civil actions where service of summons by publication is allowed and the plaintiff or plaintiff's attorney makes affidavit that "After due and diligent search the defendant, John Jones, is not to be found in the State of North Carolina", it is not necessary that summons be first issued to the sheriff and returned by the sheriff to the effect that the defendant named is not to be found in his area of jurisdiction.

27 April 1961

CIVIL PROCEDURE; CONSTABLES; SERVICE OF EVICTION ORDERS

When a constable or other officer has removed goods from a dwelling in conformity with an eviction order or writ of possession and placed the same upon the sidewalk or on the edge of the street, he has legally executed the process directed to him and the care and custody of the removed property is the responsibility of the owner thereof.

31 October 1961

CIVIL PROCEDURE; COSTS; PREMIUMS OF SURETY BONDS TAXED AS
PART OF THE COSTS

Reference to G. S. 1-109 and G. S. 1-111 in G. S. 6-1, which provides in part that premiums on surety bonds shall be taxed as part of the costs

in civil actions, excludes the inclusion in costs of premiums on any other type bonds other than those described in the referenced sections.

25 September 1961

CIVIL PROCEDURE; COSTS; SHERIFF'S COMMISSIONS UPON EXECUTIONS

The 2½% commission allowed to the sheriff's office under executions under G. S. 162-6, is to be considered as part of the costs of the execution. *DIBBLE v. AYCOCK*, 58 N. C. 399; *WALTON v. SUGG*, 61 N. C. 98; *WILLARD v. SATCHWELL*, 70 N. C. 268.

6 July 1960

CIVIL PROCEDURE; COURT COSTS; ATTORNEYS' FEES;
CUSTODY PROCEEDINGS

There being no statutory authority for allowance of attorneys' fees to the successful litigant in a proceeding for the custody of a minor child and in view of the fact that North Carolina as early as 1879 adopted the policy of nonallowance of counsel fees as a part of the costs of litigation except as modified by statutes such as G. S. 6-21, allowance of such fees as a part of the costs would be improper.

21 September 1960

CIVIL PROCEDURE; EVIDENCE; ADMISSIBILITY OF MOTOR VEHICLE
ACCIDENT REPORTS IN CIVIL ACTIONS

Although the matter is not clear because of an inconsistency in the language of G. S. 20-166.1 and G. S. 20-279.11, motor vehicle accident reports required to be made under the provisions of G. S. 20-166.1 are frequently used as evidence in civil actions arising out of motor vehicle accidents, the same being corroborative of the testimony of the investigating officer or some other person.

6 March 1962

CIVIL PROCEDURE; EXECUTIONS; ALIAS EXECUTIONS; WHEN ISSUED

An alias execution may be issued at any time while the judgment is in force and after the original execution has been returned unsatisfied.

6 October 1961

CIVIL PROCEDURE; EXECUTION; LEVY ON PERSONAL PROPERTY;
PRIORITIES; DISPOSITION OF PROCEEDS OF SALE

As to priorities in the disposition of proceeds of sale of personal property under execution, the execution under which the sheriff actually took possession of the property is first in line for payment. Subsequent executions placed in the sheriff's hands come in line for payment in the

order in which they were turned over to the sheriff. If there is any doubt as to the disposition of excess proceeds of sale, G. S. 1-339.70 and .71 provide for the payment into court and a special proceeding for a determination of the relative priorities.

23 May 1962

CIVIL PROCEDURE; EXECUTION ON MONEY JUDGMENT;
MANNER OF LEVY

A forcible entry into a judgment debtor's premises, other than his dwelling, by a sheriff or other officer having in his hands an execution in a civil action, using only reasonably necessary force, and the making of an inventory in the absence of the judgment debtor would not create any criminal liability on the part of the officer, and the levy would be valid.

12 May 1960

CIVIL PROCEDURE; HOMESTEAD EXEMPTION; REAL PROPERTY;
ESTATES BY ENTIRETIES

When execution is issued against both the husband and wife and is sought to be enforced against property held by them by the entireties only one homestead should be allowed. This homestead should be the husband's and held on the same terms, *i.e.*, by entireties for his life, and if he should not be the longer liver, then for the life of his wife.

14 May 1962

CIVIL PROCEDURE; MUNICIPALITIES; POLICE OFFICERS;
SERVICE OF CIVIL PROCESS

City and town police officers do not have authority under the general law to serve civil process issued by a justice of the peace.

12 May 1961

CIVIL PROCEDURE; PARTITION PROCEEDINGS; COSTS;
HOMESTEAD EXEMPTION

Inasmuch as costs due from a partition proceeding are considered as a charge against the land and not personal debt of parties to the proceeding, such costs may be enforced by execution against the partitioned land and the owner thereof is not entitled to allotment of a homestead as against such execution.

22 May 1961

CIVIL PROCEDURE; PARTITION PROCEEDING; PROPERTY
OF DIVORCED PEOPLE

It is not the duty of a Clerk of the Superior Court in signing orders in a partition proceeding to inquire into the marital status of the purported tenants in common.

25 August 1961

**CIVIL PROCEDURE; SERVICE OF PROCESS; WARRANTS FOR INEBRIATES,
MENTALLY DISORDERED AND JUVENILES**

Service of process for inebriates or mentally disordered persons is governed by G. S. 1-89 and must be made by the sheriff or other lawful officer of the county. Service in juvenile matters would be governed by G. S. 110-28 and service would be either by the sheriff or by any person delegated by the court for that purpose

COLLECTION AGENCIES

18 September 1961

COLLECTION AGENCIES; PRINTED MATTER SIMULATING LEGAL PROCESS

Use of "Advance and Final Notice—Before Suit" which simulates or is intended to simulate court process, for the purpose of coercion or intimidation, in connection with demand for payment is a violation of G. S. 14-118.1.

COLLEGES

21 August 1961

**COLLEGES; COMMUNITY COLLEGES; AGENCIES OF THE STATE FOR THE
PURPOSE OF PURCHASING SUPPLIES AND EQUIPMENT**

Community Colleges are exempt from the provisions of the Personnel Act. Such colleges must purchase their supplies, materials and equipment through the Division of Purchase and Contract of the Department of Administration. Such colleges are also within the purview of the Public Building Contracts Act.

1 December 1961

**COLLEGES; COMMUNITY COLLEGES; CHANGE OF NAME OR
DESIGNATION OF ONE UNIT**

Where a community college operates on the basis of two units, each of which unit has been given a definite descriptive name, the board of trustees of the community college has the authority by appropriate resolution to change the descriptive name of any one unit.

COMMERCE AND BUSINESS

25 September 1961

COMMERCE AND BUSINESS; RETAIL OUTLETS; NO LIMIT ON NUMBER

There is no North Carolina statute limiting the number of retail outlets which an individual or company may operate.

COMMERCIAL FISHERIES

13 January 1961

COMMERCIAL FISHERIES; OYSTER BOTTOM LEASES; ELIGIBILITY OF NON-RESIDENT OF STATE TO RETAIN LEASE SECURED WHILE A RESIDENT OF NORTH CAROLINA

A non-citizen is not entitled to receive, or hold a lease for oyster bottoms in the public waters; and if a person receives a lease while a citizen of North Carolina but later becomes a citizen of another state, such lease privileges as were granted to him should be surrendered in accordance with G. S. 113-182.

16 March 1962

COMMERCIAL FISHERIES; REGULATIONS; CLOSED POLLUTED AREAS; REGULATORY AUTHORITY OF BOARD

Chapter 444, Session Laws of 1959 does not permit the taking of oysters from waters which have not been approved by the State Board of Health and does not permit the taking on any day other than Tuesday and Friday from open waters of the State. Commercial Fisheries inspectors are authorized by G. S. 113-135(7) to enforce regulations concerning the taking of oysters

1 February 1962

COMMERCIAL FISHING; BOATS; LICENSING FOR SPORT FISHING BOATS USING COMMERCIAL FISHING EQUIPMENT

Boats using commercial fishing equipment outside the three-mile limit exclusively are not subject to the tax levied by G. S. 113-174.7, as revised by Chapter 1004, Session Laws of 1961, unless they are "commercial fishing boats" within the statutory definition, or unless such equipment is used in the commercial fishing waters of the State.

CONTRACTORS

28 July 1961

CONTRACTORS; ELECTRICAL CONTRACTS; HOUSES BUILT FOR SALE; USE OF UNLICENSED ELECTRICAL CONTRACTORS

A person, firm or corporation engaged in the business of building houses for sale or rent is not exempt from the provisions of Article 4 of Chapter 87 of the General Statutes, relating to electrical contractors, so far as installing wiring or electrical devices in such houses is concerned.

CONTRACTS

25 October 1960

CONTRACTS; GENERAL CONTRACTORS; EXEMPTION; BUILDING PERMITS

Under G. S. 87-14, an individual corporation constructing a building on their property would not be subject to the provisions of Article 1 of Chapter 87 of the General Statutes.

23 August 1960

CONTRACTS; MUNICIPALITIES; BID BONDS, CERTIFIED CHECKS, OR CASH

Under G. S. 143-129, the terms of the statute must be strictly complied with and a certified check or cash deposit must be submitted with the bid proposal at the time of its filing, and a cash deposit made at the time the bids are opened would prevent the acceptance of such bid.

COOPERATIVE ASSOCIATIONS

26 September 1960

CO-OPERATIVE ASSOCIATIONS; USE OF WORD "CO-OPERATIVE" IN NAME; NOT NECESSARY

There is no statutory provision requiring a co-operative association organized under subchapter V of Chapter 54 of the General Statutes to use the word "co-operative" in the name of the association.

CORPORATIONS

29 November 1960

CORPORATIONS; DOMESTICATION; COMPANY ENGAGED IN INTERSTATE COMMERCE

A company engaged in selling encyclopedia in this state under contracts made in another state is not required to domesticate since its business is wholly interstate, even though the company may be liable for state income taxes and may be subject to service of process in this state.

24 October 1960

CORPORATIONS; FOREIGN CORPORATIONS DOING BUSINESS; AUTOMOBILE LEASE

A Georgia corporation leases cars to a Delaware corporation in Georgia. The lessor has no agents in this State. Use by the lessee of the automobile in this State would not make the lessor qualify to do business in this State.

19 January 1961

CORPORATIONS; SURVIVORSHIP IN CORPORATE STOCK

Common or mutual ownership in corporate shares with rights of survivorship can effectively be created and enforced in North Carolina by an agreement either written or oral to create the survivorship coupled with some actual or constructive delivery of ownership. G. S. 41-2 abolishing survivorship in joint tenancy applies only where survivorship follows as a legal incident to an existing joint tenancy but does not prevent persons from making agreements as to personalty so as to make the future rights of the parties depend on the fact of survivorship.

COUNTIES

9 June 1961

COUNTIES; ABC BOARD; ELECTION

Under G. S. 18-41, which provides for the selection of a county ABC board at a joint meeting of the county board of commissioners, the county board of health and the county board of education, the members of these boards are not authorized to vote by proxy. The ex officio members of the county board of health, as provided for in G. S. 130-31, are entitled to one vote, when present, at the joint meeting of this board with the board of county commissioners and the county board of education when selecting the county ABC board.

12 March 1962

COUNTIES; ABC STORES; APPROVAL OF LOCATION OF ABC STORE IN
COUNTY; NO PRECINCT ELECTION AUTHORIZED

The location of ABC stores in counties is subject to approval of the State ABC Board. No election for ABC store is authorized on precinct level. The procedure for the location of an ABC store within a community which voted against such store, in a county which voted for ABC stores, is set forth in G. S. 18-39(j) as rewritten in 1961.

3 August 1960

COUNTIES; AD VALOREM TAXATION; GENERAL FUND LIMITATION;
SPECIAL FUND

The authority for the county commissioners to appropriate money under Chapter 158 of the General Statutes for local development is limited to appropriating the stated percentage from the general fund, and the Chapter does not constitute authority for making a special levy beyond the general fund. The Legislature might declare the purposes enumerated in Chapter 158 to be special purposes and grant to the counties authority to make a special levy for such purposes, but the special levy will be subject to the approval of the voters.

31 May 1961

COUNTIES; AD VALOREM TAX LEVY; NECESSARY EXPENSE OF COUNTY;
CONSTRUCTION OF COUNTY WELFARE BUILDING; DESIGNATION
OF SITE FOR COUNTY WELFARE BUILDING

The construction of a County Welfare Building may be properly considered by the County Commissioners as a necessary expense of the county within the provisions of Article V, Section 6, and Article VII, Section 7 of the Constitution of North Carolina, and the approval of a majority of the qualified voters of the county voting thereon would not be required.

Where the proposed tax levy would exceed the limitation fixed in Article V, Section 6, of the Constitution, a special act of the General Assembly authorizing the Board of County Commissioners to levy such special tax for the necessary and special purpose of constructing a County Welfare Building would be required.

The provisions of G. S. 153-9(9) apply only when designating a new site for a county building existing and already located and not to the purchase of a site and construction of an entirely new county building.

27 February 1961

COUNTIES; AIRPORTS; AUTHORITY TO MAKE GIFTS TO CITY AIRPORT

Expenditure of funds for an airport has been held by the Supreme Court not to be a necessary expense in the constitutional sense and thus tax funds could not be used therefor without approval by a vote of the people. See AIRPORT AUTHORITY v. JOHNSON, 226 N. C. 1.

3 February 1961

COUNTIES; AUTHORITY TO ISSUE BONDS FOR ARMORY CONSTRUCTION

Counties are specifically authorized to borrow money and issue and sell bonds and to raise, by taxation and otherwise, sufficient funds to defray the cost of armory construction. This may be done without a vote of the people provided the constitutional debt limitation is not exceeded by such action.

30 November 1961

COUNTIES; AUTHORITY TO OPERATE AMBULANCE SERVICE

If a county maintains a county hospital, the county could operate an ambulance service for the purpose of transporting persons to and from the county hospital. The business of transporting a patient to or from the hospital is regarded simply as an extension of the service of the hospital in providing hospital care for a patient.

30 August 1960

COUNTIES; COUNTY BOARDS OF ELECTIONS; APPOINTMENT; FILLING VACANCIES; REMOVAL OF MEMBERS; AUTHORITY OF COUNTY BOARDS OF COMMISSIONERS OVER COUNTY BOARDS OF ELECTIONS

A county board of commissioners has no authority over a county board of elections with respect to the appointment of members, the filling of vacancies, or the removal of members for any cause.

17 November 1961

COUNTIES; COUNTY FINANCE ACT; COUNTY BUILDING;
WELFARE OFFICE BUILDING

Counties are specifically authorized by G. S. 153-77, as amended, to issue bonds for the erection and purchase of county office buildings for housing offices, departments, bureaus, and agencies of the county government.

28 March 1961

COUNTIES; COUNTY LAND; DEED; EXECUTION THEREOF

A deed conveying county land executed by the County Commissioners, even though acknowledged individually, is the act and deed of the County.

30 January 1961

COUNTIES; COUNTY OFFICIALS; ATTORNEY GENERAL HAS
NO SUPERVISORY POWERS

The Attorney General does not have any supervisory powers with respect to county officials.

16 March 1961

COUNTIES; COUNTY SURVEYORS; DUTY OF COUNTY COMMISSIONERS
TO FURNISH OFFICE

There is nothing in Chapter 154 of the General Statutes, entitled "County Surveyor", which requires the county commissioners to furnish an office for the county surveyor in the courthouse.

5 May 1961

COUNTIES; EDUCATION; SCHOOL COMMITTEES; APPOINTMENTS

Under G. S. 115-70, the County Board of Education may not appoint more than five members to the district school committee where there is no local Act to the contrary.

10 February 1961

COUNTIES; HOSPITALS; GARNISHMENT; UNPAID COUNTY
HOSPITAL BILLS

Even if enabling garnishment legislation should be enacted to collect county hospital bills a debtor would still be entitled to his constitutional \$500.00 personal property exemption.

25 July 1961

COUNTIES; INSURANCE; AUTHORITY OF COUNTY TO PARTICIPATE IN
THE COST OF GROUP HOSPITALIZATION INSURANCE FOR THE
BENEFIT OF COUNTY EMPLOYEES

Counties do not have authority to use public funds to pay all or any portion of the premiums of a group hospitalization insurance policy issued for the benefit of county employees.

8 December 1961

COUNTIES; INSURANCE; GROUP HOSPITALIZATION INSURANCE FOR
THE BENEFIT OF COUNTY EMPLOYEES

Counties are authorized to purchase insurance policies for the hospitalization and/or medical benefits on behalf of their employees as provided by Chapter 57 of the General Statutes.

28 November 1960

COUNTIES; JAILS; PRISONERS SENTENCED TO WORK ON COUNTY
PROPERTIES; WORKMEN'S COMPENSATION LIABILITY

A county is not liable under Workmen's Compensation for disability resulting from injuries sustained by a person working for the county under a sentence assigning him directly to the county jail, rather than the State Prison System. G. S. 148-32 and G. S. 97-13(c).

24 January 1961

COUNTIES; LOCAL GOVERNMENT COMMISSION; MUNICIPALITIES;
CONTRACTS FOR AUDITING SERVICES; APPROVAL OF ACCOUNTANT

In exercising his duty to approve contracts of local governmental units for independent audits pursuant to G. S. 153-143, the Director of Local Government would have authority to limit his approval of accountants to those who are either certified public accountants or registered accountants.

17 April 1961

COUNTIES; MERIT SYSTEM COUNCIL; RETIREMENT RESOLUTION
BY COUNTY COMMISSIONERS

When a Board of County Commissioners adopts rules and regulations governing such matters as retirement for all employees under its jurisdiction, such rules and regulations would be applicable to all employees of the county, including employees appointed or employed under the Merit System, unless the same are prohibited by law or regulations of the Merit System Council.

12 March 1962

COUNTIES; NECESSARY EXPENSE; COUNTY OFFICE BUILDING;
ISSUANCE OF BONDS

Issuance of bonds to provide funds to build a county office building would be for a necessary expense within the meaning of Article VII, Section 7, of the Constitution.

19 January 1961

COUNTIES; NECESSARY EXPENSE; PUBLIC PURPOSE;
LOCAL DEVELOPMENT

The following is a general summary of the legal situation with respect to cities and counties expending public funds to attract industry.

(1) No public funds may be so expended without specific enabling legislation so authorizing.

(2) In the case of tax funds, not only would enabling legislation be necessary, but such legislation would have to provide for approval by a vote of the people in order to expend tax funds for such purpose.

(3) The only State-wide enabling legislation at present is that found in Chapter 158 of the General Statutes entitled "Local Development". This Chapter deals exclusively with a method for approving the expenditure of tax funds, and places limits on the amount which may be so used.

(4) There is no State-wide law authorizing the use of nontax funds for such purpose.

There are some scattered local laws authorizing various expenditures for such purpose with respect to certain counties and certain municipalities.

(5) Even when enabling legislation has been enacted, there remains the question as to whether such legislation is constitutional. The question presented is whether the expenditure is for a "public purpose" in the constitutional sense. With respect to a local law authorizing the City of Raleigh to expend public funds in advertising for industry, such a purpose was held to be a public purpose, and the enabling legislation constitutional, in the recent Supreme Court decision of *DENNIS v. RALEIGH*, 253 N. C. 400.

There is every reason to believe that the Court would reach a similar result with respect to a county.

(6) The constitutional question is not so easily answered with respect to the proposition of a number of counties contributing to a multi-county agency for the purpose of benefiting a large area comprised of many counties as opposed to the county standing alone. Certainly the money would have to be expended so that it could be shown that such expenditure was in fact designed to benefit each contributing county. If the benefit is too indirect, the Supreme Court might hold in a given case that the expenditure in question was not for a public purpose insofar as a particular county was concerned. The final answer to any such proposal would have to come from the Supreme Court.

3 March 1961

COUNTIES; NECESSARY EXPENSE; PUBLIC PURPOSE;
LOCAL DEVELOPMENT

Expenditure of funds by a county to attract and promote industry, pursuant to enabling legislation, would be an expenditure for a public purpose, but would not be an expenditure for a necessary expense within the meaning of the constitutional provision prohibiting the expenditure of tax funds for other than necessary expenses except upon approval by a vote of the people.

18 April 1961

COUNTIES; NECESSARY EXPENSE; PUBLIC PURPOSE; SUBSIDIZING
BUS OPERATION; INDUSTRIAL ENGINEER

Expenditure of county funds for the purpose of subsidizing a bus operation in a city is not an expenditure for a public purpose. It is also not a necessary expense. Expenditure by a county for the purpose of hiring an industrial engineer is for a public purpose, but is not a necessary expense and if ad valorem funds are to be used a vote of the people would be required.

26 April 1961

COUNTIES; TAXATION; PRIVILEGE LICENSE TAXES; COIN-OPERATED
BOWLING MACHINES

Because of the prohibition contained in G. S. 14-307, the North Carolina Department of Revenue, upon the advice of the Attorney General's Office, refuses to issue privilege licenses for coin-operated bowling machines which have a scoring device.

21 July 1960

COUNTIES; TAXATION; TAXES FOR SPECIAL PURPOSE; FARM
DEMONSTRATION AGENT AND HOME DEMONSTRATION AGENT

Expenses of the county farm demonstration agent and county home demonstration agent are necessary county expenses and are expenses for a special purpose, for which a county property tax levy may exceed the constitutional limitation of twenty cents on the one hundred dollars value of property imposed by Article V, Section 6 of the N. C. Constitution; general fund expenses and special purpose expenses must be separately stated in the county budget estimate, appropriation resolution and tax levy, G. S. 153-114; in the absence of a special or general act limiting the amount which may be levied for a special purpose, there is no limitation.

COUNTY COMMISSIONERS

15 August 1960

COUNTY COMMISSIONERS; AUTHORITY OF COUNTY TO
PURCHASE LAND AND OPERATE BULLDOZER FOR THE
DISPOSAL OF GARBAGE IN THE COUNTY

A county has no authority to appropriate funds for the operation of a garbage disposal dump.

24 October 1960

COUNTY COMMISSIONERS; COUNTY COURTHOUSE; USE OF
COURTHOUSE SPACE

It is in the discretion of the board of county commissioners to determine what disposition shall be made with respect to surplus office space in the county courthouse.

28 March 1961

COUNTY COMMISSIONERS; COUNTY LAND; DEED; EXECUTION THEREOF

A deed conveying county land executed by the County Commissioners, even though acknowledged individually, is the act and deed of the County.

16 March 1961

COUNTY COMMISSIONERS; COUNTY SURVEYORS; DUTY OF COUNTY
COMMISSIONERS TO FURNISH OFFICE

There is nothing in Chapter 154 of the General Statutes, entitled "County Surveyor", which requires the county commissioners to furnish an office for the county surveyor in the courthouse.

13 February 1961

COUNTY COMMISSIONERS; ELECTIONS; TERMS OF OFFICE;
CHANGES OF TERMS BY GENERAL ASSEMBLY

The General Assembly has power to extend or shorten the term of a county commissioner during the term of an incumbent.

14 December 1960

COUNTY COMMISSIONERS; OFFICIAL BONDS; ASSISTANTS TO
DEPARTMENT CHIEFS

G. S. 109-4 provides that the county boards of commissioners are authorized to require individual or blanket bonds for any or all assistants, deputies or other persons regularly employed by the county and pay the premiums on such bonds. If individual bonds are required, such individual bonds given by assistants or deputies should run to the head of the department.

17 January 1961

COUNTY COMMISSIONERS; PUBLIC OFFICIALS; MEMBERS OF COUNTY
BOARDS OF COMMISSIONERS TRADING WITH THEMSELVES

A county commissioner would violate G. S. 14-234 if he should contract either directly or indirectly with the county for laundry service, book sales and food products to any county institution or agency.

COURTS

8 February 1961

COURTS; COSTS; WITNESS FEES TO SALARIED OFFICERS; CITY POLICE
SERVING AS WITNESSES IN RECORDER'S COURTS

It is within the prohibition of G. S. 6-52 for any enforcement officer who receives a salary from any source to accept a fee as a witness for attending any superior or inferior court.

Arrest fees are not payable to such salaried officers except for arrest of a person indicted, after a true bill has been found, upon process of the court.

19 April 1962

COURTS; COUNTY COURTS; JUDGES; MARRIAGES; ACKNOWLEDGMENTS;
JUDGE'S AUTHORITY

Under the general law, a judge of a county court does not have authority to perform marriage ceremonies or to take acknowledgments generally of written instruments.

10 August 1960

COURTS; COUNTY RECORDER'S COURT; JURY FEES

G. S. 7-228 requires that a county recorder's court follow the provisions of jury trial as in municipal courts. G. S. 7-204 requires that municipal recorder's courts follow the provisions for jury trials as in justice of the peace courts. G. S. 7-155 provides for a deposit of \$3.00 for jury fees before a defendant is entitled to a jury trial. Therefore, in both county recorder's courts and municipal recorder's courts, a defendant must deposit the sum of \$3.00 before he is entitled to a jury trial.

31 August 1960

COURTS; COUNTY RECORDER'S COURTS; MUNICIPAL RECORDER'S
COURTS; TERRITORIAL JURISDICTION

In the case of *STATE v. SLOAN*, 238 N. C. 547, our Court held that, where a municipal recorder's court and a county criminal recorder's court have original and exclusive jurisdiction over the same territory, the two statutory provisions cannot be reconciled and the two courts shall have concurrent jurisdiction over both territories. G. S. 7-190 and G. S. 7-393.

25 May 1962

COURTS; COUNTY RECORDER'S COURTS; PROCEDURE

G. S. 15-200.2, relating to procedure in the superior court when the solicitor undertakes to have a suspended sentence put into effect, is also applicable to county recorder's courts because G. S. 7-189 makes superior court procedure applicable to municipal recorder's courts and G. S. 7-223 makes municipal recorder's courts procedure applicable to county recorder's courts.

8 July 1960

COURTS; COUNTY RECORDER'S COURTS; RECORDER'S COURT FUND

G. S. 7-234 provides that, in those counties where the judge and solicitor of a recorder's court are paid salaries, the financial agent or treasurer of the county is required to keep a separate and distinct fund to be known as the county recorder's court fund. This fund may be used only to pay the salaries of the recorder and prosecuting attorney and other expenses of the court.

18 July 1960

COURTS; COUNTY RECORDER'S COURT; RECORDER'S COURT FUNDS

Under G. S. 7-238, "the other expenses of the court" include all items that are necessary and proper for the administration and operation of a county recorder's court.

10 November 1961

COURTS; JURORS; SELECTION OF JURY LIST FOR MUNICIPAL
RECORDER'S COURT

Jurors for jury trials in municipal recorders courts having territorial jurisdiction over parts of several townships shall be selected from within the territorial jurisdiction of the court, irrespective of township in which the defendant resides.

28 July 1960

COURTS; JUSTICES OF THE PEACE; DUTY OF JUSTICE OF THE PEACE
TO ACCOUNT FOR AND REPORT TO COUNTY COMMISSIONERS

When a county does not operate under Article 14A of Chapter 7 of the General Statutes, the specific provisions of G. S. 115-98 and G. S. 153-47 control, and it is the duty of a justice of the peace to make an accounting for fines, penalties, etc., to the county treasurer and the county finance committee.

31 May 1962

COURTS; JUSTICES OF THE PEACE; FAILURE TO MAKE REPORTS;
REMOVAL FROM OFFICE

A justice of the peace may be removed from office for failing to file monthly reports with the clerk of the superior court as required by G. S. 143-166(n).

26 August 1960

COURTS; JUSTICES OF THE PEACE; JURISDICTION

G. S. 7-127 does not contemplate that a justice of the peace elected or appointed for one township can set up his office and perform a large portion of his duties in some other township in the county.

11 September 1961

COURTS; JUSTICES OF THE PEACE; PAY OF JURORS

Each juror summoned for jury duty in a justice of the peace court is paid twenty-five cents for attendance whether he serves or not.

22 July 1960

COURTS; MAYOR'S COURTS; JURISDICTION IN SPEEDING CASES

The Mayor's Court of Kill Devil Hills is without jurisdiction to try speeding offenses committed on State highways running through the Town of Kill Devil Hills; nor does the Town of Kill Devil Hills have authority to enact ordinances purporting to fix speed limits on city streets within the municipality which are a part of the highway system.

13 July 1961

COURTS; MOTOR VEHICLE SPEED RESTRICTIONS; JURISDICTION OF
MAYOR'S COURT OVER VIOLATIONS ON NON-HIGHWAY
SYSTEM STREETS

A Mayor's Court does not have jurisdiction to try speeding offenses under G. S. 20-141 on Town streets which are not a portion of the State Highway System except violations of a Town ordinance enacted pursuant to G. S. 20-141(f).

31 August 1960

COURTS; MUNICIPAL RECORDER'S COURTS; COUNTY RECORDER'S
COURT; TERRITORIAL JURISDICTION

In the case of *STATE v. SLOAN*, 238 N. C. 547, our Court held that, where a municipal recorder's court and a county criminal recorder's court have original and exclusive jurisdiction over the same territory, the two statutory provisions cannot be reconciled and the two courts shall have concurrent jurisdiction over both territories. G. S. 7-190 and G. S. 7-393.

26 July 1960

COURTS; MUNICIPAL RECORDER'S COURTS; METHOD OF
SELECTING RECORDER

When a municipal Recorder's Court is established pursuant to Article 24 of Chapter 7 of the General Statutes, the first recorder is appointed by the governing body of the municipality. Thereafter, successor recorders are elected in the regular municipal elections.

13 December 1960

COURTS; MUNICIPAL RECORDER'S COURT; TERRITORIAL JURISDICTION

Although a municipal recorder's court may have territorial jurisdiction within a five-mile radius of such municipal corporation under the provisions of G. S. 7-190, such extended jurisdiction may not extend to the territory within the corporate limits of any other incorporated city or town by virtue of the provisions of G. S. 7-217. There is no appellate jurisdiction from a mayor's court to a municipal recorder's court where the municipal recorder's court has no jurisdiction over the territory within the corporate limits of the town over which the mayor's court has jurisdiction.

3 January 1961

COURTS; MUNICIPAL RECORDER'S COURTS; TERRITORIAL JURISDICTION;
MEANING OF "ORIGINAL, EXCLUSIVE, AND CONCURRENT"; DEPUTY
OR ASSISTANT CLERKS FOR MUNICIPAL RECORDER'S COURTS

G. S. 7-190(1) which provides that municipal recorder's courts shall have "Original, exclusive, and concurrent jurisdiction, as the case may be,

of all offenses committed within the corporate limits of the municipality which are now or may hereafter be given to justices of the peace . . .", construed in *pari materia* with G. S. 7-190(2) gives to municipal recorder's courts exclusive jurisdiction within the corporate limits of the municipalities concerned over all offenses theretofore within the jurisdiction of justices of the peace.

G. S. 7-190(2) which provides that municipal recorder's courts shall have "Original and concurrent jurisdiction with justices of the peace of all offenses committed outside the corporate limits of the municipality and within a radius of five miles thereof, . . .", gives to municipal recorder's courts concurrent jurisdiction with justices of the peace over offenses committed outside the corporate limits of the municipality and within a radius of five miles thereof.

The provisions of G. S. 7-200.1 limit the number of deputy or assistant clerks of municipal recorder's courts to either one deputy clerk of court or one assistant clerk of court.

9 June 1961

COURTS; RECORDER'S COURTS; DAY ON WHICH COURT IS HELD;
WHO FIXES

Under the provisions of Section 7-187 of the General Statutes the town governing body is empowered to fix the day on which court shall be held in the Municipal Recorder's Court.

24 May 1961

COURTS; RECORDER'S COURT; ESTABLISHMENT; CONSTITUTION

Article II, Section 29, of the State Constitution prohibits the creation of an inferior court by local or special laws.

23 September 1960

COURTS; SOLICITORS; SUBSTITUTE SOLICITOR; COMPENSATION

Unless some arrangement can be worked out under the provisions of G. S. 7-43.1, the situation of an attorney performing the solicitor's duties when the solicitor is ill would be governed by G. S. 7-43.3 which specifically provides in Subsection 6 that, "the compensation, if any, paid to such assistant to the solicitor shall be paid by the regular solicitor."

CRIMINAL LAW

4 December 1961

CRIMINAL LAW; APPEAL TO SUPREME COURT FROM CONVICTION IN LOWER COURT; APPEAL AS A PAUPER

Where a judge of the Superior Court has approved and ordered that a defendant be allowed appeal as a pauper, then the defendant must be furnished with a transcript of the proceedings of the trial necessary to the appeal.

26 February 1962

CRIMINAL LAW; ATTEMPTED ROBBERY A FELONY

Under the decision in *STATE v. McNEELY*, 244 N. C. 737, an attempt to commit the offense of common law robbery is a felony, not a misdemeanor.

9 January 1961

CRIMINAL LAW; AUTHORITY OF OFFICER IN "HOT PURSUIT" OF FELON

Enforcement officers, while in "hot pursuit" of a fleeing felon or person whom they have reasonable grounds to believe is a felon, may cross county lines in North Carolina and arrest such felon, either with or without warrant, in any county in the State. Enforcement officers while in "hot pursuit" of a violator of the ABC Act of 1937 may cross county lines for the purpose of making arrests, either with or without warrant, even though the violator be only a misdemeanor. Arrest without warrant in North Carolina, for offenses other than felonies, except as specifically authorized by statute, is illegal.

29 December 1960

CRIMINAL LAW; BAIL; ASSIGNMENT OF JUDGMENT TO TRUSTEE FOR PROTECTION OF SURETY PAYING OFF BOND

A surety paying off and discharging a bail bond pursuant to a judgment thereon, should have the same assigned to a trustee for his benefit.

19 August 1960

CRIMINAL LAW; BASTARDY; LEGITIMATION BY SUBSEQUENT MARRIAGE

The subsequent marriage of the father and mother of a child born out of wedlock has the legal effect of legitimating the child.

27 January 1961

CRIMINAL LAW; CARRYING WEAPONS CONCEALED

A person may not carry a pistol concealed about his person. Carrying a pistol in the glove compartment of an automobile would be violative of the laws of this State. If the pistol is carried openly and in plain view of any person who might look into the automobile, there would be no violation of the laws of this State.

There is no provision under the laws of this State for a person to secure a permit to carry a pistol concealed about his person.

19 January 1961

CRIMINAL LAW; CLAIM AND DELIVERY; DISPOSING OF MORTGAGED PROPERTY; SECRETING PROPERTY SUBJECT TO LIEN

When the defendant in a claim and delivery proceeding refuses to surrender the property claimed, give bond, or reveal where the property is located, the sheriff executing the process must make his return within ten (10) days incorporating therein his expression of inability to obtain the property claimed. Refusal to surrender the property claimed, give bond or tell where the property is located may, together with other facts, constitute a violation of G. S. 14-114 (fraudulent disposal of mortgaged personal property) or G. S. 14-115 (secreting property to hinder enforcement of a lien).

18 September 1961

CRIMINAL LAW; COLLECTION AGENCIES; PRINTED MATTER
SIMULATING LEGAL PROCESS

Use of "Advance and Final Notice—Before Suit" which simulates or is intended to simulate court process, for the purpose of coercion or intimidation, in connection with demand for payment is a violation of G. S. 14-118.1.

9 April 1962

CRIMINAL LAW; CONSPIRACY IN NORTH CAROLINA

In North Carolina a conspiracy to commit a felony is a felony and a conspiracy to commit a misdemeanor is a misdemeanor.

16 February 1961

CRIMINAL LAW; DRIVING UNDER INFLUENCE OF INTOXICATING LIQUOR; SECOND OFFENSE

G. S. 20-179 setting forth the penalty for the first and subsequent convictions of driving under the influence of intoxicating liquors relates only to the sequence of convictions and not to the date of the offenses committed, so that if an individual is twice apprehended and charged

with Drunken Driving, is tried and convicted of the second charge first, he may thereafter be tried and upon conviction for the first charge be punished as for a second offense.

25 May 1961

CRIMINAL LAW; GENERAL MISDEMEANOR; MAXIMUM FINE

The Supreme Court of North Carolina has not passed on the question of the maximum fine which may be imposed for a misdemeanor conviction.

14 March 1962

CRIMINAL LAW; INCEST; FATHER AND ADOPTED DAUGHTER

Sexual intercourse between a father and his adopted daughter does not constitute incest within the meaning of G. S. 14-178 which makes intercourse between parent and child a felony.

31 May 1962

CRIMINAL LAW; INVOLUNTARY MANSLAUGHTER; MAXIMUM PUNISHMENT; ALTERNATE JUROR

Involuntary manslaughter is punishable in the discretion of the Court by fine or imprisonment, or both. A maximum sentence of not less than 12 nor more than 20 years has been upheld. After the regular jury is impaneled an alternate juror, or jurors, may be selected. These jurors are sworn and sit near the jury until the final submission of the case unless prior to that time their services are required.

16 September 1960

CRIMINAL LAW; ISSUANCE OF WORTHLESS CHECKS

The gravamen of the offense of issuing a worthless check is putting into circulation worthless commercial paper to the public detriment. A person who issues a worthless check would be subject to criminal indictment even though he had made some payment on the check and left a balance owing to the taker.

27 September 1960

CRIMINAL LAW; LARCENY; WRONGFUL TAKING, FELONIOUS INTENT TO DEPRIVE

Evidence of intent to convert and deprive the owner is necessary. Ownership of disputed property must be established before indictment for larceny.

15 September 1961

CRIMINAL LAW; MOTOR VEHICLES; DRIVER'S LICENSE; DRUNKEN
DRIVING; DRIVING WHILE LICENSE REVOKED

A conviction in the Federal courts of drunken driving in violation of Title 18, Section 13 of the United States Code, which assimilates the provisions of North Carolina criminal law into the Federal law, does not constitute a prior offense of drunken driving for purposes of determining whether or not punishment can be imposed for a second offense since G. S. 20-179 refers directly to and is expressly dependent upon a prior conviction or convictions of G. S. 20-138.

However, where the Department of Motor Vehicles has revoked an operator's license upon receiving notice of a conviction of drunken driving in the Federal courts and the licensee ignores the revocation and continues to drive, then he may properly be charged with driving while license revoked.

2 March 1961

CRIMINAL LAW; MOTOR VEHICLES; DRUNKEN DRIVING; NARCOTIC
DRUGS; PARALDEHYDE, NOT NARCOTIC DRUG

Paraldehyde is not considered a narcotic drug. Therefore, proof of operating a motor vehicle while under the influence of Paraldehyde would not support a conviction for operating a motor vehicle while under the influence of a narcotic drug.

4 January 1961

CRIMINAL LAW; MOTOR VEHICLES; ELEMENTS OF RACING ON
STREETS AND HIGHWAYS

Unlawful speeding within the meaning of G. S. 20-141 is not an element of the various offenses of motor vehicle racing described in G. S. 20-141.3.

14 September 1961

CRIMINAL LAW; MOTOR VEHICLES; JUDGE'S CHARGE; INSTRUCTION
WHERE DEFENDANT CHARGED WITH SPEEDING MORE THAN
80 MILES PER HOUR

Regardless of whether in a strict sense a violation of G. S. 20-141 (speeding) without a further finding with respect to the rate of speed involved would be deemed a lesser degree of the crime of violating G. S. 20-141 by speeding in excess of 80 miles per hour, it is nonetheless necessary and proper that the jury be given the opportunity under proper instructions to find a verdict of speeding at the greater rate of speed or at the lesser rate of speed if the State fails to prove the greater. In order that the more severe penalty of speeding in excess of 80 miles per hour can be imposed the jury must find as a part of their verdict that the speeding was

of such degree, but if they do not so find, that does not end the case for they should be so instructed that they can return a verdict of simply speeding in excess of the lawful limits, in violation of G. S. 20-141 and punishable as provided in G. S. 20-176(b).

30 January 1962

CRIMINAL LAW; MOTOR VEHICLES; VIOLATIONS OF STATUTE

G. S. 20-141 is a criminal statute and violations of its provisions constitute criminal offenses.

31 January 1961

CRIMINAL LAW; MUNICIPAL CORPORATIONS; ORDINANCES; PRESUMPTION
OF REASONABLENESS; ORDINANCE REQUIRING TRAIN TO STOP
BEFORE CROSSING STREET

Municipal corporations have authority to adopt ordinances restricting the speed of trains by virtue of their general police power. Municipal ordinances limiting the speed of trains operating within such municipality or requiring the trains to stop before entering certain street intersections are presumably reasonable and valid and not in conflict with the State or Federal constitutions. This presumption may, however, be rebutted by an affirmative showing that the ordinance is unreasonable in its application to the facts of the case.

13 December 1960

CRIMINAL LAW; NUDIST CAMPS; NUDISM

The practice of "nudism" in a nudist camp in North Carolina would constitute a violation of Section 14-190 of the General Statutes.

17 May 1961

CRIMINAL LAW; PYROTECHNICS; EXHIBITION BY PRIVATELY-OPERATED
AMUSEMENT CORPORATIONS

Under G. S. 14-410, a privately-operated amusement corporation is permitted to exhibit pyrotechnics at a public gathering under the supervision of experts who have previously secured written authority from the board of county commissioners of the county in which said pyrotechnics are to be exhibited.

1 September 1960

CRIMINAL LAW; PYROTECHNICS; POSSESSION AND EXHIBITION

G. S. 14-410, *et seq.*, enacted in 1947, relating to the sale, exhibition, and possession of pyrotechnics, takes precedence over Subsection 17 of G. S. 160-200, which subsection gives a municipality the right to regulate the exhibition, sale, and possession of pyrotechnics.

9 November 1961

CRIMINAL LAW; PYROTECHNICS; PUBLIC DISPLAY AT
CELEBRATIONS, ETC.

The board of county commissioners of any county of the State is authorized to issue permits for the use of pyrotechnics in connection with the conduct of public exhibitions, such as fairs, carnivals, shows of all descriptions, and public exhibitions, but only after satisfactory evidence is produced to the effect that said pyrotechnics will be used for such purposes and none other.

The use of said pyrotechnics in connection with such public exhibitions shall be under the supervision of experts who have previously secured written authority from the board of county commissioners of the county in which such pyrotechnics are to be exhibited, used, or discharged.

27 February 1961

CRIMINAL LAW; SEARCHES AND SEIZURES; SEARCH WARRANTS; LIQUOR
SEARCH WARRANTS; DISCOVERY OF BARBITURATES; USE IN EVIDENCE

When an officer makes a search for liquor pursuant to a valid liquor search warrant and does not discover liquor but does discover illegally possessed barbiturates, such barbiturates may be seized and may lawfully be offered in evidence inasmuch as the search disclosing the illegally possessed barbiturates was a lawful search.

9 May 1961

CRIMINAL LAW; SENTENCES; SENTENCE MUST BE APPROPRIATE
FOR OFFENSE CHARGED

The offense of driving after license has been permanently revoked is a separate and distinct offense from that of driving while license is suspended or revoked and the punishment therefor is not in the nature of punishment for a subsequent conviction of the offense of driving while license is suspended or revoked. Accordingly, unless the operator is charged with driving while license is permanently revoked, he cannot be punished for that offense. Courts are not authorized to inflict punishment beyond the bounds prescribed by law under which the warrant is drawn.

8 August 1960

CRIMINAL LAW; SHERIFFS; ARREST WITH A WARRANT; TERRITORIAL
JURISDICTION OF SHERIFF TO ARREST WITH WARRANT
OUTSIDE HIS COUNTY

Under the common law and in the absence of specific statutory authority sheriffs have no jurisdiction beyond the territorial boundaries of the area in which they have been selected, that is the county.

9 June 1961

CRIMINAL LAW; WORTHLESS CHECKS; CORPORATIONS; CONVICTION
OF CORPORATE OFFICER

A corporate officer who knowingly issues a worthless check on the corporation would be guilty of a violation of the worthless check law.

CRIMINAL PROCEDURE

9 August 1960

CRIMINAL PROCEDURE; ATTENDANCE OF WITNESS FROM
ANOTHER STATE

The procedure to be followed in order to bring a witness in a criminal case from another state back to North Carolina to testify is provided in G. S. 8-67.

11 May 1961

CRIMINAL PROCEDURE; BAIL BONDS; AUTHORITY OF LICENSED
FIDELITY AND SURETY INSURANCE COMPANY TO ISSUE

The provisions of G. S. 58-72(16)c include the writing of bail bonds by a licensed fidelity and surety insurance company.

19 January 1961

CRIMINAL PROCEDURE; CLAIM AND DELIVERY; DISPOSING OF
MORTGAGED PROPERTY; SECRETING PROPERTY SUBJECT
TO LIEN

When the defendant in a claim and delivery proceeding refuses to surrender the property claimed, give bond, or reveal where the property is located, the sheriff executing the process must make his return within ten (10) days incorporating therein his expression of inability to obtain the property claimed. Refusal to surrender the property claimed, give bond or tell where the property is located may, together with other facts, constitute a violation of G. S. 14-114 (fraudulent disposal of mortgaged personal property) or G. S. 14-115 (secreting property to hinder enforcement of a lien).

31 March 1961

CRIMINAL PROCEDURE; EXTRADITION PROCEEDINGS; AUTHORITY OF
THE GOVERNOR TO ARBITRARILY REFUSE TO GRANT REQUESTS FOR
EXTRADITION; AUTHORITY TO REVOKE WARRANT OF RENDITION

There is no judicial process by which one state can compel another state to honor a requisition even though the demand is ignored arbitrarily.

The Governor would be justified in refusing to grant the requisition should he find that any extradition proceeding has been instituted for the purpose of collecting a private claim.

The Governor may revoke a warrant of rendition provided the revocation is made prior to the time the alleged fugitive is taken from the State.

8 December 1961

CRIMINAL PROCEDURE; EXTRADITION; RETURN OF FUGITIVE WITHOUT
EXTRADITION PROCESS; COSTS AND EXPENSES

Under the rules and regulations issued by the Governor in extradition proceedings the State will not be responsible for expenses incurred in returning the fugitive unless requisition is issued by the Governor whether it is used or not; in felony cases where the fugitive voluntarily returns with the officers who receive him in the other state and no extradition process is used the board of commissioners of the county where the offense is charged is authorized to pay such expenses in felony cases.

9 August 1960

CRIMINAL PROCEDURE; JUSTIFICATION OF BAIL BOND BY CLERK
OF COURT; LICENSE FOR PROFESSIONAL BONDSMAN

G. S. 15-102 authorizes clerks of the superior court to take bail. G. S. 1-423 states the qualifications of bail and says that "they must each be worth the amount specified in the order of arrest, exclusive of property exempt from execution." The clerk of the superior court who accepts the bail must determine whether or not the bail is worth the amount to which he swears.

11 May 1961

CRIMINAL PROCEDURE; MISDEMEANOR; TWO-YEAR STATUTE OF
LIMITATION; STATUTE TOLLED BY ISSUANCE OF WARRANT

The two-year statute of limitations with respect to a misdemeanor charge is tolled by the issuance of a warrant.

13 July 1961

CRIMINAL PROCEDURE; MOTOR VEHICLES; WARRANTS; CITATIONS;
UNIFORM TRAFFIC TICKET; USE OF UNIFORM TRAFFIC TICKET
NOT COMPULSORY BUT TICKET VALID WHEN USED AS
WARRANT; FEE FOR ISSUANCE

The uniform ticket, when properly completed and executed, is valid as a warrant in Justice of the Peace Courts as in others and the justice of the peace, as issuing magistrate, is entitled to the same fees for issuance of the warrants as for any other arrest warrants.

21 June 1961

CRIMINAL PROCEDURE; MOTOR VEHICLES; WARRANTS; CITATIONS;
UNIFORM TRAFFIC TICKET; USE OF UNIFORM TRAFFIC TICKET
NOT COMPULSORY BUT TICKET VALID WHEN USED AS WARRANT

Use of the Uniform Traffic Ticket by local law enforcement officials either as a citation or as a warrant is not compulsory. However, if the same is used either as a citation or as a warrant, or both, the same would be valid and enforceable when properly completed and executed.

16 October 1961

CRIMINAL PROCEDURE; MUNICIPAL POLICE; POWER OF ARREST
BEYOND CORPORATE LIMITS

Policemen of municipal corporations have no jurisdiction to apprehend offenders beyond the corporate limits in the absence of special legislation conferring such jurisdiction. Special legislation conferring additional territorial jurisdiction upon municipal law enforcement officers is not affected by the fact that such additional territorial jurisdiction might extend into more than one county or across a county line.

4 November 1960

CRIMINAL PROCEDURE; NOL PROSSES OF FELONY IN
RECORDER'S COURT

A warrant charging a felony returnable before a Recorder's Court cannot be nol prossed by the solicitor of the Recorder's Court.

6 February 1961

CRIMINAL PROCEDURE; PLEA IN ABATEMENT; EFFECT OF REQUEST
AND CONTINUANCE; VENUE

G. S. 15-134 provides "in the prosecution of all offenses it shall be deemed and taken as true that the offense was committed in the county in which by the indictment it is alleged to have taken place, unless the defendant shall deny the same by plea in abatement, the truth whereof shall be duly verified on oath or otherwise both as to substance and fact . . .". A plea in abatement will not be entertained after an appearance by the defendant and a continuance of the cause. By procuring an order of continuance the defendant waives his legal right to insist on the allowance on a plea in abatement. *STATE v. OLIVER*, 186 N. C. 329 (1923).

26 May 1961

CRIMINAL PROCEDURE; SEARCHES AND SEIZURES; ABANDONED
PROPERTY; DISPOSITION BY SHERIFF

Article 2 of Chapter 15 of the General Statutes sets out a procedure whereby the sheriffs' departments and police departments may dispose of abandoned property.

11 July 1960

CRIMINAL PROCEDURE; SEARCH AND SEIZURE; AUTHORITY OF ALCOHOL
TAX UNIT OFFICERS TO ORIGINATE AND MAKE SEARCHES AND SEIZURES
UNDER STATE LAWS; AUTHORITY OF ALCOHOL TAX UNIT OFFICERS
(FEDERAL OFFICERS) TO ARREST UNDER A STATE LAW FOR
VIOLATION OF THE LIQUOR LAWS OF THE STATE

Federal officers, such as ATU officers, do not have any authority to originate, execute and serve state search warrants issued under the authority of state statutes nor to make arrests thereunder; in a prosecution in a state court for a violation of the liquor laws it is competent and proper for the state court to admit evidence which has been secured by ATU officers by reason of search and seizure if such search and seizure and the evidence discovered thereunder is proper, legal and valid under the Federal laws and the Fourth Amendment.

24 May 1962

CRIMINAL PROCEDURE; SEARCH AND SEIZURE; SEARCH WARRANT;
FAILURE OF JUSTICES OF PEACE TO SIGN WARRANT; HOUR OF
ISSUANCE; SIGNING LIQUOR SEARCH WARRANT *nunc pro tunc*;
NAME OF WITNESSES EXAMINED

A search warrant must be signed by the issuing person at the time of its issuance and signing of the warrant *nunc pro tunc*, after execution of the warrant, would not validate the warrant. A search warrant must conform strictly to the constitutional and statutory provisions for its issuance and be valid at the time of execution. The general appearance of a defendant's counsel for the purpose of requesting a continuance of trial does not constitute a waiver of any defects in the search warrant. G. S. 15-26, Amendment of 1961, does not require the issuing officer to indicate, on the face of the warrant, the names of "sources of information," but does require the name or names of "witnesses examined" in the course of proceedings for obtaining the warrant. The mere omission of the "hour of the day or night" from the face of the warrant, as required by G. S. 15-26, does not render illegal an otherwise valid warrant since this requirement appears to be directory and not mandatory. Whether a provision of a statute is directory or mandatory depends more upon the purpose of the statute than the language used.

27 February 1961

CRIMINAL PROCEDURE; SEARCHES AND SEIZURES; SEARCH WARRANTS;
LIQUOR SEARCH WARRANTS; DISCOVERY OF BARBITURATES;
USE IN EVIDENCE

When an officer makes a search for liquor pursuant to a valid liquor search warrant and does not discover liquor but does discover illegally possessed barbiturates, such barbiturates may be seized and may lawfully be offered in evidence inasmuch as the search disclosing the illegally possessed barbiturates was a lawful search.

27 December 1961

CRIMINAL PROCEDURE; SEARCHES AND SEIZURES; SEARCH WARRANTS;
LIQUOR SEARCH WARRANTS; HOUR OF ISSUANCE; 1961 AMENDMENTS

The 1961 amendment to the search warrant law, requiring notation of hour and date of issuance, does not apply to liquor search warrants.

26 March 1962

CRIMINAL PROCEDURE; SHERIFFS; DEPUTY SHERIFFS;
UNINCORPORATED COMMUNITIES

Only three courses, in general, are available whereby additional law enforcement protection may be provided for an unincorporated community: (1) Have the sheriff assign a deputy sheriff to the area in question, if the same is feasible from the sheriff's point of view; (2) Incorporate and set up a town police force; (3) Secure some special legislation by the General Assembly to accomplish the purpose.

7 November 1960

CRIMINAL PROCEDURE; VENUE; PROPER VENUE IN WORTHLESS
CHECK CASES

The proper venue for trial of a worthless check charge is the county in which the worthless check is first drawn, made, uttered, issued and delivered, or in any other county in which the same is thereafter attempted to be negotiated. Therefore, when a worthless check is drawn in one county, transmitted through the mails to another county, and there attempted to be negotiated, proper venue would be in either the county in which the check was drawn and placed in the mails and thus put substantially into the stream of commerce, or in the county in which the worthless check was received and attempted to be negotiated, such receipt and negotiation being an extension of the action commenced in the first county.

15 March 1962

CRIMINAL PROCEDURE; VOID TRIAL; NO JURISDICTION;
JEOPARDY DOES NOT ATTACH

Trial and conviction of a person of an offense over which the trial court does not have jurisdiction is void and such trial will not constitute former jeopardy so as to bar a trial later in a court which does have jurisdiction of the person and of the offense.

10 November 1961

CRIMINAL PROCEDURE; WARRANTS; AMENDMENT AFTER
PRELIMINARY HEARING

While warrants may be amended to more accurately describe the offense with which the defendant is charged, they may not be amended to charge a different offense. G. S. 14-31. G. S. 14-33.

6 November 1961

CRIMINAL PROCEDURE; WARRANTS; ISSUANCE; DEPUTY CLERKS

A deputy or assistant clerk of court may issue warrants only where they are specifically authorized by statute as they do not have general authority to issue warrants G. S. 15-18.

7 April 1961

CRIMINAL PROCEDURE; WITNESS FEES; EXPERT TESTIMONY BY
STATE PSYCHIATRIST

The payment to the superintendent of a State hospital of an expert witness fee for testifying in a criminal proceeding is proper. The fee, if the employee is on official business, should be turned in to the employing State agency.

DIVORCE

1 June 1961

DIVORCE; MARRIAGE LAWS; NO WAITING PERIOD AFTER FINAL DECREE
OF DIVORCE

In those cases where there has been a final decree of divorce granted in a divorce proceedings properly and legally obtained in this or a foreign state, either party to the proceedings may immediately marry in North Carolina.

DOGS

18 July 1961

DOGS; DOG WARDENS; DUTIES AND AUTHORITY; WARRANTS; NOTICE

G. S. 106-371 provides that the sheriff is the only officer empowered and authorized to give official notice to a dog owner to comply with the dog vaccination law.

G. S. 67-31(1) gives the dog warden the power of arrest and the responsibility for the enforcement of all laws pertaining to the ownership and control of dogs, including the authority to serve warrants charging failure to comply with the laws pertaining to ownership, custody and control of dogs.

Unless notice is served on the dog owner by the sheriff or his deputies, a subsequent warrant and prosecution of such person would be ineffectual.

27 July 1960

**DOGS; IMPOUNDING DOGS FOR OBSERVATION; COUNTY LIABILITY FOR
EXPENSE OF CONFINEMENT**

Dogs suspected of rabies may be impounded under G. S. 106 to determine if they are rabid. Expenses for such impoundment are to be borne by the owner. Impounded dogs, under Chapter 67, if not redeemed or reclaimed, may be destroyed in a humane manner.

20 February 1961

DOGS; PERSONAL PROPERTY

For purposes of prohibition against wilful injury to personal property, a dog is within the meaning of "personal property".

DOUBLE OFFICE HOLDING

9 October 1961

**DOUBLE OFFICE HOLDING; CHIEF OF POLICE AND DEPUTY
SHERIFF AND ABC OFFICER**

The office of chief of police of a municipality, the office of deputy sheriff of a county and the office of ABC officer in a city are all public offices within the meaning of Article XIV, Section 7, of the Constitution of North Carolina, which prohibits double office holding, and one person may not hold any combination of these offices at the same time.

9 October 1961

**DOUBLE OFFICE HOLDING; CHIEF OF POLICE AND SCHOOL
COMMITTEEMAN; SUBSTITUTE MAIL CARRIER AND
SCHOOL COMMITTEEMAN**

The office of chief of police of a town, the office of substitute mail carrier, and the office of school committeeman are all public offices within the meaning of Article XIV, Section 7, of the Constitution of North Carolina, which prohibits double office holding, and one person may not hold any combination of these offices at the same time.

3 April 1962

**DOUBLE OFFICE HOLDING; CITY SUPERINTENDENT OF SCHOOLS AND
MEMBERSHIP ON SELECTIVE SERVICE BOARD**

The office of city superintendent of schools is a public office within the scope of Article XIV, Section 7 of the State Constitution which prohibits double office holding. Membership on a selective service board is exempt from Article XIV, Section 7 of the State Constitution.

12 July 1961

DOUBLE OFFICE HOLDING; COUNTY ATTORNEY AND MEMBER OF A
BOARD OF COLLEGE TRUSTEES

A person may hold the position of county attorney and the office of member of the board of college trustees without violating Article XIV, Section 7, of the North Carolina Constitution, which prohibits double office holding.

30 May 1962

DOUBLE OFFICE HOLDING; COUNTY BOARD OF HEALTH; COUNTY
BOARD OF COMMISSIONERS

A person may not serve both as a member of a county board of health and a county board of commissioners except that the chairman of the county board of commissioners is authorized to serve ex officio on the county board of health.

12 September 1961

DOUBLE OFFICE HOLDING; COUNTY COMMISSIONER AND COUNTY
BOARD OF PUBLIC WELFARE

Membership on county board of commissioners and county board of welfare are both public offices. However, Article XIV, Section 7, exempts commissioners of public charities from the provisions of double office holding, and members of county boards of welfare are commissioners of public charities.

19 December 1960

DOUBLE OFFICE HOLDING; COUNTY COMMISSIONER;
RURAL MAIL CARRIER

The office of county commissioner and that of rural mail carrier are both considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

18 July 1960

DOUBLE OFFICE HOLDING; COUNTY VETERANS ADVISOR;
CLERK IN ABC STORE

The positions of county veterans advisor and clerk in an ABC store are not considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding.

3 August 1960

DOUBLE OFFICE HOLDING; DEPUTY SHERIFF AND TOWNSHIP CONSTABLE

The office of township constable and that of deputy sheriff are both considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

18 May 1961

DOUBLE OFFICE HOLDING; EMPLOYEE OF LOCAL BOARD OF
HEALTH; SANITARIAN

The position of sanitarian is not a public office within the meaning of Article XIV, Section 7, of the Constitution prohibiting double office holding.

9 August 1960

DOUBLE OFFICE HOLDING; INDEPENDENT CONTRACTOR HANDLING
U. S. MAIL; MAYOR

An independent contractor of the United States Postal Department, who obtains his contract on a low-bid basis and in no respect is a postal employee and is not entitled to any benefits as a United States postal employee, is not holding two public offices when he accepts the office of mayor of a municipality.

1 June 1962

DOUBLE OFFICE HOLDING; JUSTICE OF THE PEACE

Although there is a constitutional provision prohibiting double office holding in general, a specific exception is made in the case of a justice of the peace.

31 October 1960

DOUBLE OFFICE HOLDING; LOCAL DIRECTOR OF CIVIL DEFENSE;
MEMBER OF MUNICIPAL ZONING COMMISSION

Membership on a municipal zoning commission is not considered a public office within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding.

12 July 1961

DOUBLE OFFICE HOLDING; MAYOR AND PURCHASING AGENT FOR
COUNTY SCHOOL SYSTEM

A person may hold the office of mayor of a municipality at the same time he is employed as purchasing agent for a county school system and not violate Article XIV, Section 7, of the North Carolina Constitution, which prohibits double office holding.

3 January 1962

DOUBLE OFFICE HOLDING; MEMBERSHIP ON LOCAL GOVERNMENT
COMMISSION AND MAYOR OF TOWN; EFFECT OF ACCEPTING
SECOND OFFICE

Where a person holds a public office, to-wit: membership on the Local Government Commission, and accepts and qualifies for a second public office, to-wit: Mayor of a town, such act operates *ipso facto* to vacate the first office. See BARNHILL v. THOMPSON, 122 N. C. 493.

By instantly vacating his office on the Local Government Commission by accepting and qualifying for the second public office, a person thereafter cannot act as either a *de jure* or a *de facto* officer in performing the functions of the first office, to-wit: membership on the Local Government Commission. See ATKINS v. FORTNER, 236 N. C. 264.

18 June 1962

DOUBLE OFFICE HOLDING; MEMBER, BOARD OF TRUSTEES OF
COMMUNITY COLLEGE AND MEMBER OF STATE
BOARD OF EDUCATION

Article XIV, Section 7 of the State Constitution, relating to double office holding, does not prohibit one person from holding, at the same time, membership on the State Board of Higher Education and on the Board of Trustees of a Community College. Both offices are exempt from the provisions of Article XIV, Section 7 of the Constitution.

9 November 1960

DOUBLE OFFICE HOLDING; MEMBER OF BOARD OF TRUSTEES OF
STATE TEACHERS COLLEGE; MEMBER OF BOARD OF TRUSTEES
OF A COMMUNITY COLLEGE

Even though a member of a board of trustees of a State educational institution is a public officer, such office is exempt from the prohibition against double office holding contained in Article XIV, Section 7, of the Constitution, as a commissioner of a public charity, and one person may hold this office and at the same time hold another public office.

20 March 1961

DOUBLE OFFICE HOLDING; MEMBER OF COLLEGE COMMUNITY
PLANNING BOARD AND MEMBER OF STATE BOARD OF OPTICIANS

Membership on the College Community Planning Board, created by Chapter 1455 of the Session Laws of 1957, is not considered public office holding within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may serve as a member of this Board and at the same time hold another public office.

26 October 1960

DOUBLE OFFICE HOLDING; MEMBER OF GENERAL ASSEMBLY;
COUNTY ATTORNEY

The position of county attorney is not considered a public office within the meaning of Article XIV, Section 7, which prohibits double office holding.

8 August 1961

DOUBLE OFFICE HOLDING; MEMBER OF GENERAL ASSEMBLY AND
MEMBER OF THE HEALTH INSURANCE ADVISORY BOARD

Membership on the Health Insurance Advisory Board is a public office and a person may not hold the office of member of the General Assembly and the office of member on the Health Insurance Advisory Board at the same time.

7 November 1961

DOUBLE OFFICE HOLDING; MEMBER OF GENERAL ASSEMBLY AND
MEMBER OF THE MEDICAL CARE COMMISSION

A person may not hold the office of member of the General Assembly and member on the North Carolina Medical Care Commission at the same time. Article XIV, Section 7, of the North Carolina Constitution.

23 June 1961

DOUBLE OFFICE HOLDING; MEMBER OF HOUSING AUTHORITY;
COUNTY SUPERINTENDENT OF SCHOOLS

The office of county superintendent of schools and that of membership on a housing authority are both considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

28 March 1961

DOUBLE OFFICE HOLDING; MEMBER OF LOCAL SCHOOL BOARD AND
U. S. POSTMASTER

The office of U. S. postmaster and that of membership on a local school board are both considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time. To do so would subject one to rather severe penalties set forth in the statute as well as removal from the office first accepted.

9 April 1962

DOUBLE OFFICE HOLDING; MEMBER OF TOWN BOARD;
JUSTICE OF THE PEACE

Inasmuch as the office of justice of the peace is exempt from the prohibition against double office holding contained in Article XIV, Section 7, of the Constitution, a justice of the peace may lawfully serve as a member of a town governing body.

19 June 1961

DOUBLE OFFICE HOLDING; MEMBER OF URBAN REDEVELOPMENT
COMMISSION AND HOUSING AUTHORITY

The same individuals could not serve as members of an urban redevelopment commission and a housing authority since both are considered to be public offices within the meaning of Article XIV, Section 7, of the North Carolina Constitution.

8 August 1961

DOUBLE OFFICE HOLDING; MEMBER OF ZONING BOARD OF ADJUSTMENT
AND TOWN PLANNING BOARD

A member of a town planning board does not hold a public office.

28 June 1962

DOUBLE OFFICE HOLDING; REGISTRAR OF PRECINCT AND EMPLOYMENT
BY SELECTIVE SERVICE BOARD

The prohibition in G. S. 163-15 against a person holding an office or place of trust or profit acting as an election official is inapplicable to employees of a local Selective Service Board who are not officers but merely salaried employees.

4 November 1960

DOUBLE OFFICE HOLDING; TERMINATION OF FIRST OFFICE

When the mayor of a town is elected county commissioner, the office of mayor terminates upon the taking of the oath of office as county commissioner or in some other manner qualifying *de facto* as county commissioner.

12 July 1961

DOUBLE OFFICE HOLDING; TOWNSHIP CONSTABLE AND
NIGHT POLICEMAN

A township constable and night policeman are both public offices within the meaning of Article XIV, Section 7, of the North Carolina Constitution, which prohibits double office holding, and one person may not hold both offices at the same time.

12 September 1961

DOUBLE OFFICE HOLDING; TOWN ALDERMEN AND DEPUTY SHERIFF

Town aldermen and deputy sheriff are public offices within meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding. The acceptance of the second office by one, *ipso facto*, vacates the first. BARNHILL v. THOMPSON, 122 N. C. 493.

16 January 1961

DOUBLE OFFICE HOLDING; TOWN COMMISSIONER AND MEMBER OF
LOCAL SCHOOL DISTRICT BOARD

The office of membership on a town board and that of membership on a local school board are both considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold these offices at the same time.

30 June 1961

DOUBLE OFFICE HOLDING; TOWN COMMISSIONER AND SECRETARY-
TREASURER OF VOLUNTEER FIRE DEPARTMENT

A person may be town commissioner and also secretary-treasurer of a volunteer fire department without violating the Constitutional provisions against double office holding.

20 March 1961

DOUBLE OFFICE HOLDING; TOWN MANAGER AND MEMBER OF
LOCAL SCHOOL BOARD

The office of town manager and that of membership on a local school board are both considered public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

12 July 1961

DOUBLE OFFICE HOLDING; TOWN MANAGER AND TOWN CLERK

A person may not hold the office of town manager and also the office of town clerk at the same time, as this would be double office holding and prohibited by Article XIV, Section 7, of the Constitution of North Carolina.

21 March 1961

DOUBLE OFFICE HOLDING; TOWN OFFICIALS; EX OFFICIO DUTIES

A town official may not hold two public offices in violation of Article XIV, Section 7, of the State Constitution. However, the General Assembly has authority to impose upon an official the performance of additional duties.

EDUCATION

22 May 1962

EDUCATION; CITY FURNISHING FUNDS TO PAY TEACHER UNDER
JURISDICTION OF COUNTY UNIT; AUTHORITY OF COUNTY
COMMISSIONERS TO APPROPRIATE FUNDS TO
PAY MUSIC TEACHER

A municipality has no legal authority to appropriate or give away public funds for the use of a public school which is under the jurisdiction of a county administrative unit; the board of county commissioners, if funds are available, can appropriate funds to be budgeted by the school authorities to pay a music teacher; the General Assembly could authorize, by a local act, the use of such funds on the part of a municipality.

21 August 1961

EDUCATION; COMMUNITY COLLEGES; AGENCIES OF THE STATE FOR THE
PURPOSE OF PURCHASING SUPPLIES AND EQUIPMENT

Community Colleges are exempt from the provisions of the Personnel Act. Such colleges must purchase their supplies, materials and equipment through the Division of Purchase and Contract of the Department of Administration. Such colleges are also within the purview of the Public Building Contracts Act.

1 December 1961

EDUCATION; COMMUNITY COLLEGES; CHANGE OF NAME OR DESIGNATION
OF ONE UNIT OF COMMUNITY COLLEGE SYSTEM

Where a community college operates on the basis of two units, each of which unit has been given a definite descriptive name, the board of trustees of the community college has the authority by appropriate resolution to change the descriptive name of any one unit.

5 May 1961

EDUCATION; COUNTY BOARD OF EDUCATION; SCHOOL COMMITTEES;
APPOINTMENTS

Under G. S. 115-70, the County Board of Education may not appoint more than five members to the district school committee where there is no local Act to the contrary.

26 April 1962

EDUCATION; COUNTY BOARD OF EDUCATION; VACANCY IN OFFICE OF
MEMBER OF BOARD OF EDUCATION

When a vacancy occurs in the membership of a county board of education the resulting unexpired term is divided into two parts: the ap-

pointment to fill the first part of the unexpired term is in the county executive committee of the political party of the former member, who caused the vacancy, for a period of 30-days next succeeding the vacancy; if the county executive committee does not act within this period of time the State Board of Education fills the first half or part, of the vacancy; the power to fill the last half of the unexpired term belongs to the General Assembly; if the appointee to the first part of the unexpired term desires to be recommended to the General Assembly he should enter the Primary and seek such recommendations.

29 September 1961

EDUCATION; EXPENSE GRANTS; ELIGIBILITY OF APPLICANT; NON-
SECTARIAN SCHOOL; STANDARD APPLICATION FORMS PRESCRIBED
BY STATE BOARD OF EDUCATION

County and city boards of education to which applications are made for education expense grants should make detailed findings as to the residence of a child, that the child is assigned to a school attended by a child of another race and the primary findings should be made upon which the ultimate finding that it is not reasonable and practicable to reassign the child to another school is based; certified copy of all such findings should be filed with the N. C. Board of Education before expense grants are paid out, and the State Board of Education should compile an approved list of nonsectarian schools.

30 May 1962

EDUCATION; MEMBER OF CITY SCHOOL BOARD AND MANAGER OF
DAIRY; DIRECTOR OF PUBLIC TRUST CONTRACTING FOR HIS
OWN BENEFIT

A city board of education cannot enter into a contract to furnish milk and dairy supplies to public school cafeterias if a member of the board is also an executive officer and stockholder of the dairy corporation; if the manager of the dairy is merely a paid employee and is also a member of the city school board, then such contract would not be prohibited by law; a city school board cannot employ a school principal except upon the recommendation of the city superintendent of schools.

12 June 1962

EDUCATION; MENTALLY RETARDED CHILDREN; EDUCABLE MENTALLY
HANDICAPPED CHILDREN; APPROPRIATION OF TAX FUNDS FOR
SUCH PROGRAMS

Local boards of education can levy taxes for current expense and capital outlay to establish programs for mentally retarded children and educable mentally handicapped children; when such levies are made they are for the purpose of financing regular budgetary objectives and are not supplementary taxes.

1 November 1961

EDUCATION; NORTH CAROLINA BOARD OF HIGHER EDUCATION;
INSTITUTIONS OF HIGHER EDUCATION; TUITION FEES OF RESIDENT
AND NONRESIDENT STUDENTS; RESIDENCE OF MILITARY PERSONNEL
STATIONED IN NORTH CAROLINA; TUITION FEES OF CHILDREN OF
MILITARY PERSONNEL STATIONED IN NORTH CAROLINA

Under the present laws and administrative rulings of this State non-resident students of institutions of higher education are charged greater or higher tuition fees than those charged resident students; the question of residence is largely a matter of intent, and the same rules of determining residence are to be used in the case of military personnel stationed in North Carolina as would be used in determining residence of civilians who come into North Carolina.

20 December 1961

EDUCATION; SCHOOLS; ACQUISITION OF SCHOOL SITES; COMMISSIONER
OR PERSON EXERCISING A PUBLIC TRUST TRADING WITH HIMSELF;
MEMBER OF LOCAL SCHOOL COMMITTEE OWNING
SITE TO BE ACQUIRED

It is not a violation of the statutes prohibiting a commissioner of a public trust from contracting or dealing with himself for a county school board to acquire and purchase a school site or necessary land for school buildings from an individual who is the owner and also a member of the local school committee.

15 September 1960

EDUCATION; SCHOOLS; ADMINISTRATIVE UNIT ENLARGEMENT

Article 14, Chapter 115 of the General Statutes provides for the enlarging of city administrative units and under the provisions of G. S. 115-120 petitions to enlarge a city unit are subject to approval by both the city and county boards of education.

7 September 1960

EDUCATION; SCHOOLS; ADMINISTRATIVE UNITS; INSURANCE REQUIRED

A hazard insurance policy containing a \$5,000.00 deductible clause does not meet the requirements of G. S. 115-133.1.

21 November 1961

EDUCATION; SCHOOLS; ASSIGNMENT OF PUPILS; ASSIGNMENT OF PUPILS
RESIDING IN ONE ADMINISTRATIVE UNIT TO A SCHOOL OR SCHOOLS IN
ANOTHER ADMINISTRATIVE UNIT; PRIORITY OF ASSIGNMENTS

Before accepting pupils residing outside of an administrative unit a county or city board of education should furnish public school advantages to the children residing within its unit. The transfer of pupils from one administrative unit to another is entirely a matter of written agreement between the boards of education involved.

20 November 1961

EDUCATION; SCHOOLS; ASSIGNMENT OF PUPILS; UNLAWFUL ATTENDANCE OF PUPILS IN SCHOOLS OF ADMINISTRATIVE UNIT OTHER THAN THAT OF RESIDENCE

Children must attend the public schools to which they have been assigned by the appropriate board of education in whose territory their parents reside; the children subject to the jurisdiction of one board of education have no right to attend the schools operated by another board of education unless the two boards agree in writing as to such transfer or assignment as provided by statute.

29 November 1960

EDUCATION; SCHOOLS; ATTENDANCE OFFICERS

Under G. S. 115-168 it is the Board of Education which employs the attendance officer and not the Board of County Commissioners.

1 July 1960

EDUCATION; SCHOOLS; BOND DISTRICTS

Under G. S. 115-116(f) there is no authority for a bond district.

8 May 1962

EDUCATION; SCHOOLS; BONDS; ISSUANCE OF BONDS FOR SCHOOL BUILDINGS AND EQUIPMENT; ELECTION ON BOND ISSUE; TIME OF HOLDING ELECTION

School bonds for buildings and equipment are issued under the County Finance Act and an election on such bonds may be called in the form of a special election or the bonds may be voted upon at any election to be held for county officers next succeeding the passage of the bond order. If a special election is called, it cannot be held within one month before or after a regular election for county officers. Such elections are in all respects conducted by the board of county commissioners.

23 May 1962

EDUCATION; SCHOOLS; BOND PROCEEDS; APPLICATION OF INTEREST AND UNEXPENDED BALANCE

Unexpended balances derived from the proceeds of the sale of school bonds must be applied to the payment of the principal and interest of the outstanding bonds.

10 October 1961

EDUCATION; SCHOOLS; BOND OF SCHOOL TREASURER; BLANKET BOND FOR EMPLOYEES HANDLING SPECIAL FUNDS FOR INDIVIDUAL SCHOOLS

The regular school treasurer for a board of education is required to give a fidelity bond for handling regular school funds; treasurers of the individual schools who handle special funds may be covered under a blanket bond.

21 December 1961

EDUCATION; SCHOOLS; CAPITAL OUTLAY FUNDS AND BOND FUNDS; MODE OF INVESTMENT;

Where a school administrative unit has on hand proceeds from bond funds which will not be expended for some time, these funds may be invested under the Local Government Act according to G. S. 159-49.1 and G. S. 159-49.2; regular capital outlay funds derived from tax levies when same are not needed for immediate construction may be invested under the Capital Reserve Act according to G. S. 115-80.3.

12 December 1960

EDUCATION; SCHOOLS; CERTIFICATION OF SCHOOL BUS DRIVERS; SCHOOL BUSES OPERATED BY STATE AND COUNTY SUPPORTED SCHOOL FOR EXCEPTIONAL CHILDREN

Station wagons used by a school for exceptional children to pick up and deliver students to and from school daily are school buses within the meaning of G. S. 20-218 and the operators thereof are required to hold a school bus driver's certificate from the Department of Motor Vehicles in order to lawfully operate the same upon the highways.

17 October 1960

EDUCATION; SCHOOLS; CHILD BEGINNING SCHOOL ON MILITARY RESERVATION AND TRANSFERRING TO N. C. PUBLIC SCHOOL

Under the provisions of G. S. 115-162 a child properly enrolled in a school on a military reservation in North Carolina and whose birthday is December 6 would be entitled to be enrolled in the public schools of North Carolina when the child's residence, during its first year in school, was transferred from the military reservation into that of an administrative unit.

27 September 1960

EDUCATION; SCHOOLS; CITY ADMINISTRATIVE UNITS; ELECTIONS; VOTERS

Under the provisions of Article 14, Chapter 163 only the involved area would vote in an election to determine whether or not the said area should be attached to a city administrative unit. *JORDAN v. COMMISSIONERS*, 245 N. C. 290.

9 January 1961

EDUCATION; SCHOOLS; CITY ADMINISTRATIVE UNIT; VENUE OF ACTION
AGAINST CITY ADMINISTRATIVE UNIT

Under G. S. 115-27 boards of education are bodies corporate and act through their public officers and agents; the venue of an action against a city administrative unit where the title to real estate is not involved would be governed by G. S. 1-77 and should, therefore, be brought in the county in which the city administrative unit operates and performs its duties.

16 January 1961

EDUCATION; SCHOOLS; COUNTY AND CITY ADMINISTRATIVE UNITS;
COVERAGE UNDER WORKMEN'S COMPENSATION ACT

County and city administrative units are required to comply with the Workmen's Compensation Act for the coverage of employees paid from local or special funds of such units, including lunchroom employees.

5 July 1960

EDUCATION; SCHOOLS; CURRENT EXPENSE FUND FOR INDUSTRIAL
EDUCATION CENTER

Under provisions of G. S. 115-86 current expense funds provided by the county to an industrial education center are allowed on the basis of a budget approved by the county board of commissioners.

23 January 1961

EDUCATION; SCHOOLS; DISTRICT LINES BISECTING PROPERTY OWNED
BY AN INDIVIDUAL; PROPERTY BOTH WITHIN AND WITHOUT SCHOOL
DISTRICT; SPECIAL SCHOOL TAX; ATTENDANCE AND ENROLLMENT
OF PUPILS

Where an individual owns property both within and without the boundaries of a city administrative unit he should pay the supplemental school tax on that portion of his land that lies within the boundaries of the city administrative unit regardless of where he lists his taxes; attendance of pupils in the public schools is determined by attendance areas and the districts where the parents or persons in loco parentis reside, and such attendance is not determined necessarily by the payment of a supplemental school tax; county and city administrative units may assign pupils and permit their attendance in schools located in another administrative unit other than where the parents reside by agreements in writing between the two administrative units and entered upon the official records of the boards of such units.

20 November 1961

EDUCATION; SCHOOLS; DISTRICT REFERENDUM ON CONSOLIDATION

There is no authority of law to conduct a referendum to determine the views of the residents of a school district as to whether or not they favor consolidation of schools; before any consolidation is made the school law provides for ample opportunity for the expression of views in a public hearing.

7 February 1961

EDUCATION; SCHOOLS; ELIGIBILITY OF CHILDREN PLACED IN FOSTER HOMES TO ATTEND PUBLIC SCHOOLS; ATTENDANCE AREA OF SUCH CHILDREN; RESIDENCE OF PARENTS

A child validly placed in a foster home by operation of law is under the control of the foster parents to the same extent as that exercised by natural parents or guardians and such child should attend the public schools in the attendance area where his foster parents reside.

20 December 1961

EDUCATION; SCHOOLS; KEEPING PUPIL AFTER SCHOOL HOURS AS FORM OF PUNISHMENT RESULTING IN DENYING PUPIL TRANSPORTATION TO HIS HOME ON SCHOOL BUS

Principals and teachers in the reasonable exercise of authority to punish pupils for misconduct may keep pupils in after school hours even though this form of punishment prevents the pupil from riding on the bus to his home; the test of reasonableness, however, would require that a day's notice of the infliction of such punishment be given to the parents so that they may arrange for other transportation or accommodations for the pupil.

28 September 1961

EDUCATION; SCHOOLS; LEGAL RIGHT TO ATTEND PUBLIC SCHOOLS; ASSIGNMENT OF PUPILS; ADOPTION, GUARDIAN, PERSONS IN *loco parentis*; APPOINTMENT OF GUARDIAN; APPOINTMENT OF GUARDIAN AS A METHOD OF ATTENDING PUBLIC SCHOOL OF ONE ZONE SELECTION OR CHOICE; JURISDICTION OF CLERK OF COURT

A guardian may not be appointed for a child for the mere purpose of giving the child a domicile or residence other than the parents' for the mere purpose of going to a selected public school, and an adopted child is in contemplation of law the child of adoptive parents, and the residence of the parents determines the public school which the child shall attend unless otherwise assigned under the Pupil Placement Act. The Clerk of the Superior Court has jurisdiction over the appointment of guardians, and whether or not a guardian shall be appointed depends upon the findings and judgment of the Clerk.

17 August 1960

EDUCATION; SCHOOLS; OWNERSHIP OF PROPERTY

School property belongs to the administrative unit and not to the district committee.

24 November 1961

EDUCATION; SCHOOLS; REGULATIONS GOVERNING ATHLETICS IN PUBLIC SCHOOLS; ELIGIBILITY TO PARTICIPATE IN INTERSCHOLASTIC ATHLETICS UPON TRANSFER OF RESIDENCE; PUPIL ASSIGNMENT ACT

The Pupil Assignment Law does not automatically nullify the residence requirements of the regulations promulgated by the State Board of Education as to high school athletes who transfer or are assigned to schools outside the district administered by another administrative unit. In order to avoid discrimination the residence rules should be applied with the right of the student to satisfy the proper officials that the assignment or transfer is not related to athletics but was made for scholastic or educational reasons.

14 May 1962

EDUCATION; SCHOOLS; RULES AND REGULATIONS; SUSPENSION OF MALE STUDENT ON CHARGE OF BEING FATHER OF ILLEGITIMATE CHILD

Where a regulation provides that if a boy should be proved guilty of being the father of an illegitimate child he shall be suspended from school for one year, and the boy has been convicted in an inferior court and has appealed to the Superior Court, the presumption of innocence prevails, and the boy is entitled to graduate from the school.

22 December 1960

EDUCATION; SCHOOLS; SALE OF REAL PROPERTY; PROCEDURE

Under provisions of G. S. 115-126, it is not necessary that a commissioner be appointed to sell surplus school property but the sale is advertised and otherwise conducted as provided by statute for judicial sales of real property.

19 September 1960

EDUCATION; SCHOOLS; SALE OF SURPLUS PROPERTY

Under the provisions of G. S. 115-126 a board of education may not sell at private sale a house which is surplus to the board's needs and which is located upon land which is not surplus to the board's needs except under circumstances set forth in G. S. 115-126(3).

20 November 1961

EDUCATION; SCHOOLS; SCHOOL COMMITTEEMEN; EMPLOYMENT OF MEMBERS OF THEIR IMMEDIATE FAMILIES

The Public School Law of the State does not prohibit members of a school committee from employing their relatives as teachers or other employees of the public school system.

19 October 1961

EDUCATION; SCHOOLS; STATE BOARD OF EDUCATION; LOANS FROM LITERARY FUND

An application for a loan from the State Literary Fund under the provisions of G. S. 115-108.1 must contain sufficient supporting evidence to warrant the State Board of Education in finding as a fact that it is not practicable to secure such a loan under G. S. 115-101, and also to enable the State Board of Education to find as a fact that a dire emergency exists which requires the loan to be made under G. S. 115-108.1.

21 September 1961

EDUCATION; SCHOOLS; SUPERINTENDENTS, PRINCIPALS AND TEACHERS; MEMBERS OF THE NATIONAL GUARD OR VARIOUS RESERVE UNITS; LEAVE OF ABSENCE FOR MILITARY SERVICE; RE-EMPLOYMENT RIGHTS

There is no specific statutory provision which guarantees re-employment of superintendents, principals and teachers upon return from active military service; county and city boards of education may by regulation provide for the employment of temporary or interim superintendents, principals and teachers until the return of these persons from military service if these governing bodies so desire.

18 December 1961

EDUCATION; SCHOOLS; TRANSPORTATION; USE OF TAX FUNDS TO PURCHASE ACTIVITY BUS

A county board of education has no legal authority to use special levy tax funds of a district for the purchase of an activity bus.

7 August 1961

EDUCATION; SCHOOLS; VOCATIONAL TRAINING; TRADE AND INDUSTRIAL EDUCATION; LIABILITY OF SCHOOL BOARDS, OFFICERS AND EMPLOYEES FOR NEGLIGENCE

Vocational trainees or pupils taking training under the vocational system of the public schools cannot maintain tort actions for injuries against school boards or school superintendents. Teachers may be individually liable in certain cases for their own negligence. Where such training is conducted upon the premises of an industry and a trainee or pupil is injured the management of the industry would not be liable for negligence unless willfully inflicted.

8 August 1960

EDUCATION; TEACHERS' CONTRACTS

G. S. 115-72. No election of a teacher is valid until the same is approved by the county superintendent and the county board of education.

ELECTIONS

7 July 1960

ELECTIONS; ABC ELECTIONS; BEER AND WINE; SUFFICIENCY OF PETITIONS FOR ELECTIONS ON SALE OF WINE AND BEER

In beer and wine elections, as well as in ABC elections, the requirement of the statutes with respect to petitions for such elections—that “15 per cent of the registered voters of the county that voted for Governor in the last general election”—refers to the total number of votes cast for Governor in the last general election, and not necessarily the identical persons who cast votes for Governor in said election. See *WEAVER v. MORGAN*, 232 N. C. 642.

13 July 1960

ELECTIONS; ABC ELECTIONS; SUFFICIENCY OF PETITION

After a petition for an ABC election has been received by a county board of elections, the board could not legally allow the original petition to be amended and thus give the petitioners additional time within which to secure the requisite number of signers to authorize the election.

14 September 1960

ELECTIONS; ABSENTEE VOTING IN GENERAL ELECTION

G. S. 163-77.1 provides that a discharged disabled war veteran in a government hospital is entitled to register by mail and vote by absentee ballot in all State-wide primaries and elections.

23 September 1960

ELECTIONS; ANNEXATION OF CONTIGUOUS PROPERTY TO MUNICIPAL CORPORATION

In the annexation of contiguous property to a municipal corporation under G. S. 160-445 *et seq.* it is not necessary to have a referendum unless the same is required as therein provided or the governing body decides to call a referendum on its own motion.

27 September 1960

ELECTIONS; CHANGING PRECINCT LINES; REGISTRATION

Under the provisions of G. S. 163-22 and G. S. 163-23 if the county board of elections alters precinct lines and does not order a new registration, the registrars transfer the names of the registered voters affected by the change of precinct lines.

16 August 1961

ELECTIONS; CORRUPT PRACTICES ACT; FAILURE OF CANDIDATE TO DISCLOSE NAMES OF CONTRIBUTORS

The failure of a candidate for public office to itemize and give the names of contributors to his campaign would be violative of G. S. 163-194, and such candidate would be guilty of a misdemeanor under G. S. 163-196(8).

3 May 1962

ELECTIONS; DEPUTY SHERIFFS DISQUALIFIED

Deputy sheriffs are public officers, and as such are prohibited from serving as election officials. G. S. 163-15.

22 July 1960

ELECTIONS; DOMICILE OF CANDIDATE

The exception contained in G. S. 163-25(d) concerning the situation "where the husband and wife have separated and live apart" refers to a physical separation and not to a formal legal separation.

20 October 1960

ELECTIONS; DOMICILE; COLLEGE STUDENTS

A student attending a college in a county which is not his domicile and such student not having established a domicile in the county in which the school is located, he is not entitled to register and vote in the county in which the college is located.

28 June 1962

ELECTIONS; DOUBLE OFFICE HOLDING; REGISTRAR OF PRECINCT AND EMPLOYMENT BY SELECTIVE SERVICE BOARD

The prohibition in G. S. 163-15 against a person holding an office or place of trust or profit acting as an election official is inapplicable to employees of a local Selective Service Board who are not officers but merely salaried employees.

30 August 1960

ELECTIONS; DUTY OF REGISTRAR TO PASS UPON QUALIFICATIONS OF
PERSONS PREVIOUSLY REGISTERED IN COUNTIES HAVING MODERN
LOOSE-LEAF AND VISIBLE REGISTRATION SYSTEMS AND WITH A
FULL-TIME AND PERMANENT REGISTRATION

In counties having a modern loose-leaf and visible registration system and a full time permanent registration under G. S. 163-43, G. S. 163-31 and G. S. 163-31.2, when a registered voter moves from one precinct to another, he is required by G. S. 163-29 to file an affidavit "setting forth that all other qualifications to register and vote still exist" and the county board of elections is required to determine if such facts are true and if they are true to transfer the registration.

12 March 1962

ELECTIONS; EMPLOYEES OF STATE HIGHWAY COMMISSION;
ELECTION OFFICIALS

Persons holding positions of employment with any State department or agency are eligible for appointment to a county board of elections.

22 November 1960

ELECTIONS; "FACSIMILE BALLOTS"

"Facsimile ballots" may not be counted in an election since G. S. 163-168 provides in part that "No ballots except official ballots bearing the official endorsement shall be allowed to be deposited in the ballot box or to be counted."

19 April 1962

ELECTIONS; FILING FEES; USE FOR NEW REGISTRATION

Filing fees are moneys received by county subdivisions; thus, are subject to daily deposit law, G. S. 153-135.

15 March 1962

ELECTIONS; GENERAL ELECTION; PRIMARY ELECTION; OFFICE HOLDER
RUNNING FOR DIFFERENT OFFICE

An elected public official may run for office without relinquishing an office which he holds. He would not be forced to vacate the first office until such time as he was elected and undertakes to qualify for the second office.

17 May 1962

**ELECTIONS; MUNICIPAL CORPORATIONS; REGISTRATION BOOKS;
LOOSE-LEAF REGISTRATION SYSTEM**

Where a county has adopted the modern loose-leaf registration system as provided by G. S. 163-43 and 163-31, and a municipality within such county has a special act, Chapter 716, Session Laws of 1951, which provides for registration and conduct of elections which are inconsistent with provisions of the general law, it is deemed advisable for the municipality to conduct its registration and elections in accordance with the special act, notwithstanding the provisions of G. S. 163-31.3.

13 February 1961

ELECTIONS; NOMINATIONS OF CANDIDATES

The General Assembly has authority to abolish municipal primary elections and provide for nonpartisan elections.

4 October 1960

ELECTIONS; OATH OF PERSON APPLYING FOR REGISTRATION

When a person presents himself to register to vote the required oath should be administered while the person has his hand upon the Bible under G. S. 11-2; however, under authority of *McPHERSON v. BURLINGTON*, 249 N. C. 569, the failure to take the oath prescribed before registration will not deprive the involved person of his right to vote or render his vote void.

28 June 1962

**ELECTIONS; PRIMARY ELECTION; CANDIDATES MUST BE PROPERLY
REGISTERED DURING PROPER REGISTRATION PERIOD**

A person who has no party affiliation recorded on the registration book is not eligible to file as a candidate in a primary election. A candidate is not a nominee until he has been put in nomination as required by statute and has complied with all of the requirements of G. S. 163-119.

31 January 1962

**ELECTIONS; PRIMARY ELECTION; FILING FOR CANDIDACY IN PRIMARIES;
RESIDENT JUDGES OF 18TH AND 26TH JUDICIAL DISTRICTS;
SENIOR AND JUNIOR JUDGES**

G. S. 7-68.1 establishes the offices for additional resident judges in the 18th and 26th Judicial Districts, but does not designate them as 18-A, 18-B, 26-A and 26-B. The resident judges in each of the districts are assigned courts according to Schedules 18-A, 18-B, 26-A and 26-B.

Under G. S. 7-68.3 the two resident judges have equal jurisdiction, authority and status, "but all duties placed by the Constitution or statutes

on the resident judge of a judicial district, including the appointment to and removal from office, which are not related to a case, controversy, or judicial proceeding and which do not involve the exercise of judicial power, shall be discharged by the resident judge of the judicial district senior in point of continuous service on the superior court; and if two judges be of equal seniority, then by the judge who is senior in point of age."

As the statute provides only that there be two resident judges in each district, without designating specific offices, the two resident judges for the 18th Judicial District and the two resident judges for the 26th Judicial District must run at large.

15 March 1962

ELECTIONS; PRIMARY ELECTION; GENERAL ELECTION; OFFICE
HOLDER RUNNING FOR DIFFERENT OFFICE

An elected public official may run for office without relinquishing an office which he holds. He would not be forced to vacate the first office until such time as he was elected and undertakes to qualify for the second office.

1 June 1962

ELECTIONS; PRIMARY ELECTIONS; NAMES OF CANDIDATES OMITTED
FROM PRIMARY BALLOT; GENERAL ELECTION WRITE-IN VOTES; SPECIAL
PRIMARY; COUNTY COMMISSIONERS' POWER TO APPOINT

Where two Democratic candidates file for the office of township constable, and by mistake both names fail to appear on the primary ballots, the County Board of Elections has no statutory authority to either hold a special primary or to let the names of the two candidates appear on the ballots in a second primary for representatives. However, the Board of Elections may provide blank space for write-in votes on the General Election ballots for the office of constable. By authority of Article IV, Section 24 of the Constitution and G. S. 151-6, the County Commissioners may appoint to fill a vacancy, but may not appoint more than one constable in each township.

1 June 1962

ELECTIONS; PRIMARY ELECTIONS; PRECINCT OFFICIALS; ONE PARTY
ONLY PARTICIPATING IN A SECOND PRIMARY DOES NOT HAVE THE
RIGHT TO HAVE PRECINCT OFFICIALS SELECTED ENTIRELY FROM
THIS ONE PARTY. THE PROVISIO ALLOWING PRECINCT OFFICIALS TO BE
SELECTED ENTIRELY FROM ONE PARTY APPLIES ONLY TO FIRST
PRIMARY WHERE THERE IS ONLY ONE PARTY PARTICIPATING

Under Section 15 and Section 180 of the Election Laws the proviso which gave to a party the right to have precinct officials entirely from that party when its candidates are the only candidates participating in the primary is applicable to the so-called first primary or first phase of the primary process and is not applicable to the so-called second or run-off

primary. When both parties participate in the first primary and the precinct officials are composed of members of both parties these same precinct officials conduct the second primary even though the candidates of only one party are participating in the second primary.

4 May 1961

ELECTIONS; RECOUNTING BALLOTS UNDER MUNICIPAL CHARTER PROVISIONS; RECOUNTING BALLOTS UNDER G. S. 163-143 AND RULES OF STATE BOARD OF ELECTIONS

Where municipal charter provision is to the effect that the board of aldermen shall have the same powers and duties as conferred upon county boards of elections by Chapter 163 of the General Statutes of North Carolina, then, in that event, they shall be the sole judges of a recount of ballots when contested by one of the candidates.

27 September 1960

ELECTIONS; REGISTRATION; CHANGING PRECINCT LINES

Under the provisions of G. S. 163-22 and G. S. 163-23 if the county board of elections alters precinct lines and does not order a new registration, the registrars transfer the names of the registered voters affected by the change of precinct lines.

19 April 1962

ELECTIONS; REGISTRATION; FEES FOR REGISTRARS

Compensation of registrars can be established by the Board of Elections with approval of County Commissioners under G. S. 163-20 and G. S. 163-20.1. Registration of registrars may be effected at a meeting at which a registration commissioner may take such registration, where the new loose-leaf and visible system of registration is being placed in effect.

11 April 1962

ELECTIONS; REGISTRATION; LOOSE-LEAF PERMANENT
REGISTRATION SYSTEM

County Board of Elections is granted authority to make reasonable regulations to insure adequate registration by voters, and this authority includes the right to provide for registration at places other than the homes of the registrars, and the right to enforce regulations through authority to appoint and remove officers of elections.

26 October 1961

ELECTIONS; REGISTRATION; LOOSE-LEAF SYSTEM; ADOPTION BY
COUNTY; JOINT USE BY CITY AND COUNTY

A municipality may adopt a modern loose-leaf permanent registration system for the registration of voters in a city or town.

G. S. 163-31.3 provides for the use of a county's loose-leaf permanent registration system by a municipality, and where a county's precinct lines overlap into a municipality, different colored registration cards may be used to distinguish registrants in the precinct who live inside of the municipality.

A voting ward may be divided up into several voting precincts for the convenience of voters.

30 August 1960

ELECTIONS; REGISTRATION; LOOSE-LEAF SYSTEM; DUTY OF REGISTRAR
TO PASS UPON QUALIFICATIONS OF PERSONS PREVIOUSLY REGISTERED
IN COUNTIES HAVING MODERN LOOSE-LEAF AND VISIBLE REGISTRATION
SYSTEMS AND WITH A FULL-TIME AND PERMANENT REGISTRATION

In counties having a modern loose-leaf and visible registration system and a full time permanent registration under G. S. 163-43, G. S. 163-31 and G. S. 163-31.2, when a duly registered voter moves from one precinct to another, he is required by G. S. 163-29 to file an affidavit "setting forth that all other qualifications to register and vote still exist" and the county board of elections is required to determine if such facts are true and if they are true to transfer the registrations.

17 May 1962

ELECTIONS; REGISTRATION; LOOSE-LEAF REGISTRATION SYSTEM;
SPECIAL ACT; GENERAL LAW; INCONSISTENCY

Where a county has adopted the modern loose-leaf registration system as provided by G. S. 163-43 and 163-31, and a municipality within such county has a special act, Chapter 716, Session Laws of 1951, which provides for registration and conduct of elections which are inconsistent with provisions of the general law, it is deemed advisable for the municipality to conduct its registration and elections in accordance with the special act, notwithstanding the provisions of G. S. 163-31.3.

26 July 1961

ELECTIONS; REGISTRATION; REGISTRARS; CITY ADMINISTRATIVE
SCHOOL UNIT

A county precinct registrar appointed by a county board of elections is authorized to register voters only in the county registration book and not in a book provided by a city, town or municipality.

30 August 1960

ELECTIONS; SPECIAL ELECTIONS; ABSENTEE VOTING

Absentee voting is permitted only in general elections. Absentee voting is not permitted in special elections. This is true even though a special election may be held on the same day as a general election.

25 September 1961

ELECTIONS; SPECIAL ELECTION; STATE-WIDE BOND ELECTION

A special election held pursuant to G. S. 60-159, by a municipality, may be held at the same time as a statewide bond election.

8 August 1961

ELECTIONS; SPECIAL ELECTIONS; STATE-WIDE BOND ELECTION

A referendum election to establish a Community Center District under special statute may be held at the same time as a State-wide bond election.

16 April 1962

ELECTIONS; STATE BOARD OF ELECTIONS; AUTHORITY TO REVIEW
FINDINGS OF FACT OF COUNTY BOARD OF ELECTIONS REGARDING
PARTY AFFILIATION OF CANDIDATE

The State Board of Elections has responsibility to "supervise" activities of county boards of elections to insure compliance with the law and with rules and regulations of the State Board. The State Board does not have authority to grant a hearing *de novo* upon a determination of fact as to qualification of a candidate made by a county board of elections, or to order the county board to reverse a finding of fact previously made, if such finding is supported by competent evidence.

22 February 1962

ELECTIONS; TRANSFERS AND CHANGES OF PARTY AFFILIATION

Under G. S. 163-123, a voter must declare, and have recorded on the registration book, his affiliation with the political party in whose primary he proposes to vote, and shall not be entitled to vote in the party primary unless he is in good faith a member thereof. Having once declared and recorded his party affiliation and designated that he is a good faith member thereof, the only way such person may change his registration is in accordance with the provisions of G. S. 163-50. This is indicated by G. S. 163-46 where it is said: "Such recorded party affiliation on the registration book shall thereafter be permanent unless, or until, the same shall be changed by such elector in accordance with the provisions of Section 163-50 of the General Statutes."

G. S. 163-50 is entitled "Change of Party Affiliation", and requires the voter to take the oath of party loyalty to the party to which he wishes

now to affiliate. This being the only way that a person may change his party affiliation, a voter who has affiliated with a political party may not change his registered designation to an Independent.

20 October 1961

ELECTIONS; VACANCY IN GENERAL ASSEMBLY; REGISTRATION

Article II, Section 13 of the Constitution contemplates that the Governor may fill a vacancy in the membership of the General Assembly immediately by appointing some person recommended by the executive committee of the county in which the vacancy occurs. The Constitution does not provide for an immediate recommendation by the executive committee of the party affected.

EMINENT DOMAIN

22 June 1962

EMINENT DOMAIN; AUTHORITY OF STATE HIGHWAY COMMISSION TO ACQUIRE RIGHT OF WAY FOR BLUE RIDGE PARKWAY

The Highway Commission is authorized to acquire such right of way for the Blue Ridge Parkway as is required to comply with the rules, regulations, etc., of the Federal Government, and may not divest itself of the discretion vested in it by law by acts prior to a final determination of necessity.

3 January 1961

EMINENT DOMAIN; AUTHORITY TO CONDEMN LANDS FOR STREETS OUTSIDE CITY LIMITS

The right of a municipal corporation to condemn lands for streets must be specifically granted by the Legislature either in the charter of the municipal corporation or by the General Statutes. G. S. 160-205 grants authority to cities to condemn lands for rights-of-way outside the city limits. Procedure is as prescribed in the charter granting the authority, or as set forth in Chapter 40 of the General Statutes.

17 March 1961

EMINENT DOMAIN; CONDEMNATION OF LAND FOR SEWAGE DISPOSAL SYSTEM OUTSIDE OF MUNICIPALITY

Power set forth in G. S. 160-424.2 may be exercised by city independently from the issuance of the bonds authorized in G. S. 160-424.1.

19 April 1962

EMINENT DOMAIN; CONDEMNATION OUTSIDE CORPORATE LIMITS AND IN ANOTHER STATE

A municipality may condemn land outside its corporate limits for the purpose of providing a water system for its inhabitants. However, a

municipality in North Carolina cannot condemn land located in another State for laws have no extraterritorial effect beyond the territorial limits of the State that enacts them.

25 October 1961

EMINENT DOMAIN; CONDEMNATION PROCEDURE; DUTIES AND
AUTHORITY OF CLERK OF SUPERIOR COURT

Highway condemnation suits instituted under Article 9, Chapter 136 of the General Statutes are civil actions and not special proceedings before the clerk. The clerk has no authority to disburse the estimated compensation deposited by the Highway Commission except on order of the Judge of the Superior Court and the clerk does not have any authority to extend the time for filing answer or to determine any issues of fact or law raised by the pleadings, these matters being solely within the jurisdiction of the Judge. The clerk should appoint commissioners only after there has been an order entered by the Judge determining the issues as provided in G. S. 136-108 and then only when commissioners were requested in the answer or by motion filed in apt time.

16 May 1961

EMINENT DOMAIN; PROCEEDINGS TO ACQUIRE LAND FOR
FIRE STATIONS

The list of purposes for which eminent domain proceedings may be had by municipalities does not include acquisition of land for fire stations specifically. Since this power is one granted by the Legislature, the purpose of such proceeding should be stated by the Legislature to include this specific function

12 April 1962

EMINENT DOMAIN; REDEVELOPMENT COMMISSION; CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

It is unnecessary for Redevelopment Commission to obtain certificate of public convenience and necessity from Utilities Commission prior to exercise of eminent domain power.

11 June 1962

EMINENT DOMAIN; REDEVELOPMENT COMMISSION; POWER TO CONDEMN
STATE, COUNTY AND MUNICIPAL PROPERTY

G. S. 160-465 does not authorize a redevelopment commission to condemn property belonging to municipalities, counties or the State, but merely authorizes the acquisition of such properties with the consent of the municipality, county or State.

23 August 1960

EMINENT DOMAIN; STATE LEGISLATIVE BUILDING SITE;
CONDEMNATION OF PRIVATE PROPERTY

The State Legislative Building Commission has the authority to initiate condemnation proceedings to acquire property as a Legislative Building site without first obtaining approval of any executive department of the State government.

23 August 1960

EMINENT DOMAIN; STATE LEGISLATIVE BUILDING COMMISSION; POWER
TO ACQUIRE BY CONDEMNATION PROPERTY ALREADY COMMITTED
TO A PUBLIC USE

The State Legislative Building Commission has the authority to condemn lands of a utility or public service corporation in acquiring a site for the proposed State Legislative Building.

20 July 1960

EMINENT DOMAIN; STREETS; RIGHTS OF WAY

The provisions of G. S. 136-66.3(c) for municipalities to acquire rights of way on State Highway Commission System streets within municipalities with the same authority granted the State Highway Commission in Chapter 136 of the General Statutes is a substantive authorization and does not authorize the municipality to follow the procedural remedies prescribed by Article 9 of Chapter 136.

ESCHEATS

17 January 1961

ESCHEATS; UNCLAIMED WATER SERVICE DEPOSITS

Deposits for water service, unclaimed by former tenant after deduction of unpaid water rents due, are personal property held in trust subject to escheat within the meaning of G. S. 116-23. "Forfeiture" of such unclaimed sums does not operate in favor of a municipality to divest the University of its claim upon unclaimed sums of money.

ESTATES

7 October 1960

ESTATES; ADMINISTRATION; PERSONAL PROPERTY; TENANCY BY THE ENTIRETIES WITH SURVIVORSHIP; HUSBAND AND WIFE JOINTLY ISSUED CERTIFICATE OF DEPOSIT

Certificates of deposit issued to a husband "or" wife or to a husband "and/or" wife, the husband now being deceased, belong one-half to the estate of the deceased husband and one-half to the surviving wife, nothing else appearing. However, if it appears that the certificates were obtained for money deposited by the husband, then the entire proceeds of the certificates would belong to the estate of the deceased husband and the wife would have no interest therein except as a distributee of the deceased husband's estate.

12 December 1961

ESTATES; ADMINISTRATION; PROBATE OF CODICIL WHERE WILL IS DESTROYED

A codicil to a will must be probated even though the will be missing and presumed destroyed, where the testamentary provisions of the codicil are not dependent upon the provisions of the will for their effectiveness.

1 June 1961

ESTATES; ADMINISTRATION; SALE OF PERSONAL PROPERTY AT PRIVATE SALE; SALE BY ADMINISTRATRIX TO SELF AS WIDOW; PROOF OF VALUE

An administrator cannot purchase property at his own sale without prior approval or subsequent ratification of the sale by all those who otherwise would have some interest in the property. The book value of shares of stock is some evidence of the market value of such shares.

16 October 1961

ESTATES; ADMINISTRATION; WIDOWS; CHILD'S ALLOWANCES

Chapters 316 and 749 of the Session Laws of 1961 which amended G. S. 30-15 and G. S. 30-17 to increase the year's allowance of surviving spouses and children apply only with regard to estates of persons dying on and after the effective dates of such chapters of the Session Laws.

7 November 1960

ESTATES; ADMINISTRATION; WIDOW'S YEAR'S ALLOWANCE; NET INCOME OF DECEDENT; INCLUSION OF PROCEEDS FROM SALE OF TIMBER AND OTHER REAL PROPERTY

In computing the "annual net income of the deceased for the three years next preceding his death" for the purpose of determining the widow's year's allowance under the provisions of G. S. 30-31, there should be in-

cluded in such net income the net proceeds or gain from sales of timber and real property. This net gain from the sale of such property may be computed by deducting the sum of the cost base of the property (regardless of when obtained) and the expenses incurred in connection with the sale from the sales price.

13 February 1961

ESTATES; DECEDENTS; DISSENTS FROM WILLS; RIGHT TO DISSENT

The language of G. S. 30-1(b) which provides in effect that a surviving spouse may not dissent from the will of a deceased spouse if he or she receives one-half or more the value of all property passing upon the death of the testator contemplates that the "one-half or more in value of all the property passing upon the death of the testator" shall be computed without regard to debts, costs of administration, or taxes

20 July 1961

ESTATES; INTESTATE SUCCESSION; DISSENTS FROM WILLS; ELECTION TO TAKE LIFE INTEREST IN LIEU OF INTESTATE SHARE

In case of election to take a life interest in lieu of an intestate share, G. S. 29-30(d) (e) and (f) spell out the procedure for a jury to allot the life interest. The jury must allot the same in conformity with G. S. 29-30(a) and (b) and include therein the lands upon which the house and outbuildings are "situated and reasonably necessary to the use and enjoyment thereof."

If either the widow or any other person interested in the estate objects to the allotment by the jury, they can object and appeal as in the partition proceeding. G. S. 29-30(f); G. S. 46-1 *et seq.*

The jury allotting the life interest contemplated by G. S. 29-30 is not required to make any findings of fact as such, but only to allot the life estate according to G. S. 29-30(a) and (b) and report the same as provided by G. S. 29-30(d) and (e).

EXECUTORS AND ADMINISTRATORS

12 June 1962

EXECUTORS AND ADMINISTRATORS; ADMINISTRATION; SALE OF REALTY; CLAIMS OF CREDITORS

A purchaser for value of real property from the heirs of a decedent would take such property free of the claim of any creditor provided such sale occurred more than two years after the death of the decedent, or if within two years after the death of the decedent no action had been brought by such creditors to subject the real property to the decedent's debts. G. S. 28-83.

19 July 1960

EXECUTORS AND ADMINISTRATORS; ADMINISTRATION OF ESTATES;
THREE MONTHS INVENTORY; REQUIREMENT OF INCLUSION OF
REAL PROPERTY

Only that real estate which comes into the hands of the executor, administrator or collector or to the hands of some person for such representative need be inventoried under the provisions of G. S. 28-50 and that real property which passes immediately upon the death of the decedent to his heirs and devisees and which never thereafter is administered upon by the personal representative need not be so inventoried.

22 August 1961

EXECUTORS AND ADMINISTRATORS; BOND OF NONRESIDENT EXECUTOR
WHERE NO PERSONALTY SITUATE IN THIS STATE; WILLS; PROBATE OF
NONRESIDENT'S WILL PREVIOUSLY PROVED IN STATE OF RESIDENCE

G. S. 28-34 which describes the minimum penalty of bonds of executors of whom bonds are required is geared to and depends upon the amount or value of the personal property of the deceased located in this State and without regard to the value of real property theretofore owned by the deceased wherever situated or personal property located outside the State.

Under the provisions of G. S. 31-27 and in order for a will probated in another state or country to effectively affect or dispose of real property located in this State, it must have been executed according to the laws of this State, which fact must appear affirmatively from the testimony of a witness or witnesses to such will, or from findings of fact or recitals in the order of probate. Such order of probate should in turn evidence that the procedure followed in such other state or country constitute a substantial compliance or conformity with the provisions of Chapter 31 of the General Statutes relating to the probate of wills in this State.

2 January 1962

EXECUTORS AND ADMINISTRATORS; COMPENSATION AS AN ITEM OF
COURT COSTS

Compensation to an administrator and his attorney for defending an action against decedent's estate are not proper items of court costs in such civil action.

4 April 1962

EXECUTORS AND ADMINISTRATORS; FINAL ACCOUNTS FILED SIX
MONTHS AFTER QUALIFICATION

The 1961 Amendment to G. S. 28-47 reducing from twelve to six months the time allowed creditors to file claims against the estate of a decedent could permit an estate to be fully administered six months after the executor or administrator filed the first notice to creditors. If an estate has been fully administered, the Clerk should receive the final account of the executor or administrator.

4 August 1961

**EXECUTORS' AND ADMINISTRATORS' LIABILITY FOR PAYMENT OF
INTEREST ON CLAIMS FILED WITH AN ESTATE**

An administrator is not required to pay interest on claims filed with him against an estate.

26 March 1962

**EXECUTORS AND ADMINISTRATORS; PERSONAL PROPERTY; RIGHT
OF SURVIVORSHIP**

A savings account in a savings and loan association entitled "A and/or B as joint tenants with right of survivorship and not as tenants in common" is insufficient to establish survivorship rights in the funds. A valid contract between the depositors could, however, create survivorship rights in the account.

22 June 1962

EXECUTORS AND ADMINISTRATORS; YEAR'S ALLOWANCE

The costs of a special proceeding for the allowance of a year's allowance to a surviving spouse should be borne by the estate against which the surviving spouse's claim is asserted.

EXTRADITION

6 October 1960

**EXTRADITION; RIGHT OF EXTRADITION UPON VIOLATION OF ORDER FOR
CONTEMPT IN CIVIL ACTION**

Under the Federal Constitution and our statute governing extradition, such proceeding must be based upon the charge of crime.

FINES AND FORFEITURES

27 October 1961

FINES AND FORFEITURES; BONDS; COSTS; DEDUCTIONS

Costs should not be deducted from the proceeds of bond forfeitures, but rather, the entire amount of the forfeited bond proceeds should be turned over to the county and paid into the county public school fund.

FIRE PROTECTION

7 May 1962

FIRE PROTECTION; AUTHORITY OF FIRE WARDEN TO SUMMONS MALE STUDENTS OF 18 YEARS OF AGE FOR FIRE FIGHTING

Under G. S. 113-55, a forest warden or ranger has authority to summons a public school pupil 18 years of age to assist in fighting forest fires.

25 September 1961

FIRE PROTECTION; DISTRICT; GENERAL WATER SYSTEM ESTABLISHMENT

A fire protection district created pursuant to Article 3A of Chapter 69 of the General Statutes would not have authority to establish and operate a public water supply system.

23 March 1962

FIRE PROTECTION; DISTRICTS; RURAL; ESTABLISHMENT

G. S. 69-25.1 *et seq.* provides specifically that rural fire protection districts shall be established only upon majority vote.

24 April 1962

FIRE PROTECTION; DISTRICTS; TAX LEVY; ELECTIONS; FREQUENCY OF ELECTIONS

By its terms, the restriction regarding the frequency of elections authorized by G. S. 69-25.1 regarding the levy of taxes for fire protection applies only to the question of increasing a tax levy and not to the question of the original levy of taxes for support of the fire district.

7 September 1961

FIRE PROTECTION; FIREMEN'S PENSION FUND; MEMBERS OF MUNICIPAL FIRE DEPARTMENT

Members of a privately-owned fire department, who are also members of the fire department of a municipality, would be eligible for membership in the Firemen's Pension Fund, but only by virtue of their membership in the town fire department. G. S. 118-23.

9 November 1961

FIRE PROTECTION; FIREMEN'S RELIEF FUND; LOCAL BOARD OF TRUSTEES; HEART ATTACKS SUSTAINED BY FIREMEN

Where a fireman in active service suffered a heart attack after returning from fighting a fire, suffered another heart attack two years later while fighting a fire, had no previous heart disease, is now totally disabled

and sustained financial loss as a result of his heart condition, and has filed a claim with the board of trustees of a firemen's local relief fund, under G. S. 118-7(1), it is incumbent upon the board of trustees of the local fund to determine if the heart attacks constitute injuries received while in the performance of the claimant's duties as a fireman.

6 December 1960

**FIRE PROTECTION; MOTOR VEHICLES; VOLUNTEER FIREMEN;
SIRENS; RIGHTS OF WAY**

When a volunteer fireman is actually using his privately-owned vehicle in the performance of his duties as a fireman, there may be installed thereon a red light visible from the front of the vehicle. Only the chief and assistant chief of a volunteer fire department may use a siren on his privately-owned automobile, and no other volunteer fireman other than the chief or his assistant may do so. Fire department vehicles, that is those actually belonging to the fire department and not individual members thereof, are accorded the right-of-way when the drivers thereof are sounding audible signals by bell, siren or exhaust whistle. However, such right-of-way does not operate to relieve the driver of a fire department vehicle from the duty to drive with due regard for the safety of others using the highway, nor to protect the driver of any such vehicle from the consequence of any arbitrary exercise of such right-of-way. Volunteer firemen operating privately-owned vehicles and traveling to the scene of a fire have no right-of-way superior to other vehicles traveling upon the highway.

24 March 1961

**FIRE PROTECTION; MUNICIPAL CORPORATIONS; CONTRACTING FOR
SAME WITH A VOLUNTARY FIRE DEPARTMENT**

The governing board of a town has implied power to contract with a voluntary fire department located within its corporate limits for the furnishing of fire protection to citizens of the town.

10 August 1960

**FIRE PROTECTION; SANITARY DISTRICTS; USE OF FIRE FIGHTING
EQUIPMENT OUTSIDE OF DISTRICT**

A sanitary district is not authorized to establish and maintain a fire department outside the confines of the district to furnish fire protection to the areas outside the district.

GAME LAWS

8 May 1961

GAME LAWS; FISHING; PRIVATE PONDS; STATE PRISON FARMS PONDS NOT INCLUDED

Ponds on State prison farms are not considered private ponds for purposes of fishing license requirements. Exemptions of owners or tenants do not apply to employees living on State prison farm property.

12 April 1961

GAME LAWS; LICENSE FEES; HUNTING AND FISHING MONIES BELONGING TO STATE

Funds received from the sale of hunting and fishing licenses are State funds handled by a fiduciary agent, and are not debts owing to the State. No administration upon these funds is authorized, and proof of a claim is not required, since they are funds held by a fiduciary under the agency arrangement.

GARNISHMENT

23 August 1961

GARNISHMENT; TAXES OF SISTER STATE

Finance officers of municipalities of this State have no authority to honor garnishment process issued by sister states or by political subdivisions of such states.

GUARDIANS

4 October 1960

GUARDIANS; CLERK OF SUPERIOR COURT; APPOINTMENT OF SUCCESSOR GUARDIAN WHEN GUARDIAN DIES; TRANSFER OF GUARDIANSHIP ESTATE TO SUCCESSOR GUARDIAN; COSTS

In case of death of the guardian of a minor ward the Clerk of Superior Court should appoint an administrator for the guardian for the purpose of rendering a final account for settlement of the ward's estate in those cases where it does not appear that any administration will be made on the guardian's estate. No costs of administration of the guardian's estate may be paid out of the estate of the ward.

7 September 1961

**GUARDIANS; CLERK OF SUPERIOR COURT; INCOMPETENT VETERANS;
RESIDENCE**

The word "residing" within the meaning of G. S. 33-48 means actual physical dwelling within another state and not domicile. The Clerk of Superior Court may order transfer of funds in a guardianship to a guardian of another state or to the proper officer of the courts of another state when the ward lives in such other state, but no authority is found for transferring funds to the manager of a Veterans Hospital.

27 July 1961

**GUARDIANS; CLERK OF THE SUPERIOR COURT; INVESTMENT IN
SECURITIES; REDUCTION OF BOND**

G. S. 36-4 provides for the reduction of a guardian's bond when certain registered securities are deposited with the Clerk of the Superior Court. Although G. S. 36-3 authorizes certain fiduciary investments in building and loan stock, G. S. 36-4, relating to the reduction of the amount of a bond, specifically refers to securities within the classes designated by G. S. 36-1 and 36-2, which sections do not include building and loan stock.

HEALTH

30 May 1962

**HEALTH; COUNTY BOARD OF HEALTH; COUNTY BOARD OF
COMMISSIONERS; DOUBLE OFFICE HOLDING**

A person may not serve both as a member of a county board of health and a county board of commissioners except that the chairman of the county board of commissioners is authorized to serve ex officio on the county board of health.

23 March 1961

**HEALTH; COUNTY BOARD OF HEALTH; MANUFACTURE AND
SALE OF SANDWICHES**

A county board of health has authority to adopt reasonable regulations relating to the manufacture and distribution of sandwiches provided such regulations are reasonably related to the protection of the public health.

19 January 1962

**HEALTH; COUNTY BOARDS OF HEALTH; MUNICIPAL FLUORIDATION
OF WATER**

A county board of health does not have authority to compel a municipality to fluoridate its municipal water supply.

16 March 1962

HEALTH; COUNTY BOARDS OF HEALTH; REGULATION OF TRAILER
CAMPS AND MOBILE HOME PARKS

A county board of health has authority to adopt regulations designed to protect the public health with respect to the operation of mobile homes or trailer camps.

21 July 1960

HEALTH; LOCAL HEALTH DEPARTMENT EMPLOYEES; COMPLIANCE
WITH MERIT SYSTEM LAW COMPULSORY

The State merit system law is mandatory with respect to local health department employees and compliance therewith is not optional with the county.

9 February 1961

HEALTH; LOCAL HEALTH DEPARTMENT; MILK REGULATIONS; AGRICULTURE
DEPARTMENT REGULATIONS; LOCAL HEALTH
DEPARTMENT REGULATIONS

Pursuant to its general powers, a local health department may adopt milk regulations stricter than the regulations of the State Department of Agriculture.

18 October 1961

HEALTH; STATE BOARD OF HEALTH; SECONDHAND BEDDING STATUTES;
SALE BY WHOLESALER TO RETAILER; DUTY TO SANITIZE

It is unlawful for a wholesaler in this State to sell secondhand bedding to a retailer without first causing the material to be sanitized.

18 October 1961

HEALTH; STATE BOARD OF HEALTH; PHARMACISTS;
BROMISM-CAUSING DRUGS

There is no statute requiring drugs which can cause bromism to be sold only on prescription.

3 March 1961

HEALTH; TUBERCULAR SUSPECT; REFUSAL TO PERMIT EXAMINATION;
PROCEDURE TO COMPEL

When a person is believed by a county health director to have active tuberculosis and such person refuses to submit to an appropriate medical examination at a proper time and place, such person is guilty of a criminal offense and, through appropriate criminal proceedings, such person can be brought to trial at which time a judge would be enabled to issue appropriate orders.

26 July 1961

HEALTH; VENEREAL DISEASES; REPORTS AS TO LABORATORY TESTS

Pursuant to the 1961 amendment to G. S. 130-95 it is mandatory for a laboratory performing a positive laboratory test for venereal disease to make a report of a positive test to the local health director in such form and manner as the State Board of Health directs.

HOSPITALS

24 March 1961

**HOSPITALS; CONTRACTS; PUBLIC BIDDING; PURCHASE OF EQUIPMENT;
SALE OF SURPLUS PROPERTY**

In expending funds to equip a county hospital, the fact that gifts were a source of part of the funds would not in itself relieve the county of the duty to comply with the public competitive bidding statutes. Even if all of the funds were gifts, the county would be relieved from the competitive bidding acts only if such were a condition of the gifts.

INEBRIATES

28 November 1961

INEBRIATES; COMMITMENT; DEFINITION OF NARCOTICS OR DRUGS

While the definition in G. S. 90-113.1 is not necessarily controlling in determining the meaning of "narcotics or drugs" as specified in G. S. 35-1 or G. S. 35-30, it should be given considerable weight in interpreting the terms "narcotics or drugs" until the Legislature has specifically defined the terms in connection with commitment of inebriates.

12 April 1962

**INEBRIATES; NOTARY PUBLIC; ACKNOWLEDGMENTS OF SIGNATURES
OF INMATES**

Notary Publics at State hospitals are not to notarize signatures of inmates (inebriates).

9 January 1962

INEBRIATES; PHYSICIANS' EXAMINATIONS, HEARINGS BEFORE CLERK

When alleged alcoholic inebriates are to be examined, the examining physicians are to be designated by the clerk, and the evidence of these physicians in either affidavit form or by oral testimony is treated by the clerk as judge of the issue as substantive evidence to be considered with other evidence.

INSANE PERSONS AND INCOMPETENTS

14 March 1962

INSANE AND INCOMPETENTS; INFANTS; ADMISSION TO SCHOOL; SIGNATURES ON APPLICATION FOR ADMISSION; JURISDICTION OF JUVENILE COURT

Juvenile court's jurisdiction which continues during infant's minority, includes control over question of admission or commitment of infant to institution.

13 March 1962

INSANE AND INCOMPETENTS; INFANTS; SERVICE OF PROCESS; COMMITMENT TO MENTAL HOSPITALS

If minor is fourteen years old or older, copy of process should be delivered personally to minor (who then must defend through guardian, general, etc., or *ad litem*).

If minor is under fourteen, copy should be delivered to his general guardian if he has one; otherwise, copy to be delivered personally to minor and to his father or mother or other guardian.

8 July 1960

INSANE AND INCOMPETENTS; ORDERS OF COMMITMENT FOR OBSERVA- TION; ORDERS OUTSTANDING FOR THIRTY DAYS

If a clerk issues an order of commitment and the patient is not actually admitted to the hospital within thirty days of the date on which the clerk took action, the order of commitment would be void.

21 November 1960

INSANE AND INCOMPETENTS; PROBATION; RETURN TO HOSPITAL

At any time within twelve months after a patient is placed on probation the patient may be returned to the hospital without further hearing or order by the clerk of the superior court.

20 December 1960

INSANE AND INCOMPETENTS; PROBATIONERS; VETERANS HOSPITAL

There is no statute authorizing the clerk of Superior Court to compel a sheriff to return a patient to a veterans hospital for the care of mentally disordered persons.

5 July 1961

INSANE AND INCOMPETENTS; RESTORATION TO SANITY

A patient discharged from a State hospital who has had no guardian appointed may follow the procedure under either G. S. 35-4 or G. S. 35-4.2 to obtain legal restoration of sanity.

INSURANCE

14 September 1960

INSURANCE; AGENTS EXTENDING CREDIT; ACCEPTING NOTE; SERVICE CHARGE ON DELINQUENT INSURANCE PREMIUMS

Insurance agents may extend credit on premiums, or they may accept a note with or without interest from an insured in payment of premiums, but an insurance agent may not collect service charges on delinquent insurance premiums.

2 April 1962

INSURANCE; AUTOMOBILE LIABILITY INSURANCE; SAFE DRIVER REWARD PLAN; USE OF PAST EXPERIENCE FOR PROSPECTIVE RATING PLAN

The Safe Driver Reward Plan, promulgated pursuant to G. S. 58-248.8 and approved by the Commissioner of Insurance as an automobile liability insurance rating plan applicable to private passenger automobiles, does not operate retrospectively because it employs past experience of drivers for insurance rating classification purposes; it operates prospectively in determining the insurance rate applicable for the purchase of insurance for the future.

23 September 1960

INSURANCE; CORPORATE SURETY ON BID BONDS; AGENT SIGNING WITHOUT ATTACHING POWER OF ATTORNEY

Where a company becomes surety on a contractor's bid bond, it is not unlawful for the agent of the company to sign the bid bond without attaching a copy of his power of attorney.

1 August 1960

INSURANCE; DEPOSITS IN THIS STATE BY COMPANIES NOT LICENSED TO DO BUSINESS

The Commissioner of Insurance is not authorized by statute to enter into any agreement with an insurance company not licensed to do business in this State regarding cash deposits in a trust fund in a North Carolina bank.

29 June 1961

INSURANCE; FARMERS' VOLUNTARY CROP-HAIL PROTECTION PLAN

A voluntary agreement, which is not legally binding on or enforceable against any of the parties, to help compensate neighbors who suffer crop losses from hail damage is not insurance, and the Commissioner of Insurance is not authorized or required by law to regulate same.

8 May 1962

INSURANCE; GROUP ACCIDENT AND HEALTH; EMPLOYEES OF
COUNTY ABC BOARD AND THEIR DEPENDENTS

County ABC Board is not authorized to purchase group insurance covering dependents of its employees; however, certain benefits payable to the employee on account of hospitalization or medical treatment of his dependents may be provided in a group accident and health policy (G. S. 58-254.4(f))

18 December 1961

INSURANCE; GROUP LIFE INSURANCE PLAN FOR CERTAIN CLASSES
OF EMPLOYEES (KEY PERSONNEL)

A group life insurance plan covering certain class or classes of employees of employers engaged in the same kind of business may be written under subparagraph (4) of G. S. 58-210 if the plan complies with all of the requirements of that subparagraph, even though the employers are all members of an association and use the word "association" in referring to or designating the plan.

17 August 1961

INSURANCE; GROUP LIFE INSURANCE PLAN FOR A GROUP OF SMALL
EMPLOYERS; INDEPENDENT GARAGE OWNERS

Under G. S. 58-210(4), group life insurance may not be written to cover a group of numerous small employers, as such, but the statute does permit group life insurance to be written under a trustee plan to cover all employees of a group of employers in the same industry or kind of business, and the "... policy may provide that the term 'employees' shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership."

14 November 1961

INSURANCE; INDIVIDUAL AND BLANKET HOSPITALIZATION AND
ACCIDENT AND HEALTH INSURANCE POLICIES; SUFFICIENT
NOTICE OF NONRENEWAL

Under G. S. 58-251.2 requiring minimum periods of notice of nonrenewal with respect to certain individual or blanket family hospitalization policies and accident and health policies, notice of nonrenewal given

by a company three months in advance of the effective date of nonrenewal is adequate notice under the statute where the policy had been continuously in force for twenty-three months and twelve days from the date of reinstatement of same.

29 July 1960

INSURANCE; LICENSING REQUIREMENT FOR SALARIED EMPLOYEE OF
INSURANCE COMPANY WHO SOLICITS CONTRACTS OF INSURANCE

A salaried employee of an insurance company engaged in soliciting additional members under a group insurance contract is engaged in selling insurance, and he may not engage in such activity without either being licensed as an insurance agent or being accompanied by a licensed insurance agent.

12 September 1960

INSURANCE; VEHICLE FINANCIAL RESPONSIBILITY ACT OF 1957;
AUTOMOBILE SOLD BY DEALER NO LONGER COVERED BY
INSURANCE UNDER DEALER'S INSURANCE POLICY

An automobile, which has been sold by a dealer and is operated by the new owner for a short period of time with dealer plates thereon, is no longer covered with liability insurance under the insurance policy of the automobile dealer, and it is unlawful for the new owner to operate the motor vehicle "... in this State without having in full force and effect the financial responsibility required by ..." the Vehicle Financial Responsibility Act of 1957.

3 August 1960

INSURANCE; VEHICLE FINANCIAL RESPONSIBILITY ACT OF 1957;
CANCELLATION AUTO LIABILITY INSURANCE POLICY

Where an insured effects voluntary cancellation of his automobile liability insurance policy certified to the Department of Motor Vehicles as proof of financial responsibility under the Vehicle Financial Responsibility Act of 1957, the written notice of termination to the named insured provided for in G. S. 20-310 is not required, and the earned premium on the policy cancelled by the named insured is to be computed by the use of the short rate table.

INTOXICATING BEVERAGES

12 March 1962

INTOXICATING BEVERAGES; ABC STORES; APPROVAL OF LOCATION OF ABC STORE IN COUNTY

The location of ABC stores in counties is subject to approval of the State ABC Board and no election for ABC store is authorized on precinct level. The procedure for the location of an ABC store within a community which voted against such store, in a county which voted for ABC stores, is set forth in G. S. 18-39(j) as rewritten in 1961.

21 March 1962

INTOXICATING BEVERAGES; ABC STORE; SALE AND DISTRIBUTION OF NON-ALCOHOLIC PRODUCTS

There is no provision under Chapter 18 of the General Statutes for the distribution and sale of non-alcoholic products through ABC Stores.

8 November 1960

INTOXICATING BEVERAGES; ADDING PURE GRAIN ALCOHOL TO BEVERAGE FOR SALE

A soft drink which has an alcoholic content of not more than 5% obtained by the addition of pure grain alcohol does not come within G. S. 18-64.

6 April 1962

INTOXICATING BEVERAGES; ADVERTISEMENT OF ALCOHOLIC BEVERAGES

Erection of signs away from the store which directs attention to ABC store locations is such indirect advertisement of alcoholic beverages as is prohibited in G. S. 18-53.

24 April 1962

INTOXICATING BEVERAGES; AUTHORITY OF STATE BOARD TO FIX RETAIL PRICES ON ALCOHOLIC BEVERAGES

G. S. 18-39(c) authorizes the State Board of Alcoholic Control to fix the price for which alcoholic beverages may be sold at local stores, and such price may include the 12% tax provided under Chapter 826, 1961 Session Laws.

17 May 1961

INTOXICATING BEVERAGES; BEER AND WINE; LAW GOVERNING SALE OF BEER; AUTHORITY TO REGULATE IN ADDITION TO GENERAL LAW

G. S. 18-141 governs the sale of beer between the hours of 11:45 P.M. and 7:30 A.M. each day, as it is a later statute than G. S. 18-105.

The Board of County Commissioners or the governing bodies of municipalities, as the situation applies, have the authority, in addition to the general regulations, to restrict the sale of beer between the hours of 11:30 P.M. and 11:45 P.M. on Saturday and Sunday and between the hours of 7:30 A.M. and 11:45 P.M. on Sunday. The authority does not extend to 7:00 A.M. and 7:30 A.M. on Sunday and Monday, as this would be in conflict with the general law.

24 October 1961

INTOXICATING BEVERAGES; CONFISCATION OF MODIFIED VEHICLE
USED IN TRANSPORTATION OF ILLEGAL WHISKEY; RIGHTS
OF INNOCENT LIEN HOLDER

A modified vehicle used in transportation of illegal whiskey must be sold in order to protect a bona fide lienholder's interest.

2 September 1960

INTOXICATING BEVERAGES; DISPOSAL OF SUGAR FOUND IN
ABANDONED AUTOMOBILE

Sugar found in an automobile which has been abandoned is to be disposed of by the law enforcement officers as provided in Article 2 of Chapter 15 of the General Statutes.

21 May 1962

INTOXICATING BEVERAGES; POSSESSION IN BUILDING USED AS
COMBINATION BUSINESS AND DWELLING IN WET COUNTY

The mere possession of less than the statutory amount of taxpaid spirituous liquors, wine and malt liquors in an area operating liquor stores under the Alcoholic Beverage Control Act is not unlawful, even if the possession is in a building used as a combination business-dwelling. Possession for the purpose of sale is unlawful.

26 May 1961

INTOXICATING BEVERAGES; POSSESSION; DISPLAY; TAXPAID LIQUOR;
PUBLIC DRUNKENNESS

A municipal auditorium, leased by a private organization, is not a public place in which the display of taxpaid intoxicating beverages would be considered a violation of G. S. 18-51.

In order for a person to be convicted under G. S. 14-334, such person must be not only drunk, but disorderly.

Hotel rooms are considered private dwellings and the possession of taxpaid intoxicating beverages therein for the personal use of the person registered therein, for his family, and for his bona fide guests, is lawful.

If a member of a private club stores a small quantity of alcoholic beverage in a private locker located in said private club, such member

would not violate G. S. 18-15 or any other section of the General Statutes of North Carolina: Provided, (1) the member lawfully acquired the beverage in question, (2) the member had the sole control over the private locker and its contents, (3) the beverage was kept for the sole use of the member and not for barter, sale, exchange, distribution or division among the members of the club or other persons.

15 September 1961

INTOXICATING BEVERAGES; POSSESSION OF TAXPAID LIQUOR IN
WET AREA

The mere possession of less than one gallon of taxpaid whiskey in a "wet" area is not a violation of the law. It would have to be alleged and proven that the whiskey was actually held for the purpose of sale.

8 March 1962

INTOXICATING BEVERAGES; PROHIBITION AGAINST EXCLUSIVE OUTLETS

A brewery may not require a distributor in North Carolina to limit his sales to a single outlet or a single chain store system.

11 July 1960

INTOXICATING BEVERAGES; SEARCH AND SEIZURE; AUTHORITY OF
ALCOHOL TAX UNIT OFFICERS TO ORIGINATE AND MAKE SEARCHES
AND SEIZURES UNDER STATE LAWS; AUTHORITY OF ALCOHOL TAX
UNIT OFFICERS (FEDERAL OFFICERS) TO ARREST UNDER A STATE
LAW FOR VIOLATION OF THE LIQUOR LAWS OF THE STATE

Federal officers, such as ATU officers, do not have any authority to originate, execute and serve state search warrants issued under the authority of state statutes nor to make arrests thereunder; in a prosecution in a state court for a violation of the liquor laws it is competent and proper for the state court to admit evidence which has been secured by ATU officers by reason of search and seizure if such search and seizure and the evidence discovered thereunder is proper, legal and valid under the Federal laws and the Fourth Amendment.

13 December 1960

INTOXICATING BEVERAGES; TRANSPORTATION INTO DRY COUNTY
FROM OUT OF STATE

It is not a violation of the law for a person to transport into North Carolina alcoholic beverages legally purchased outside of the State when the same are for his own personal use and the quantity does not exceed one gallon.

21 March 1962

INTOXICATING BEVERAGES; TRANSPORTATION OF NOT MORE THAN
ONE GALLON TAXPAID

A person may transport for his personal use not more than one gallon of taxpaid alcoholic beverage, legally purchased in another State, into and through North Carolina, provided that the cap or seal on the container has not been opened or broken.

JUDICIAL SALES

16 March 1961

JUDICIAL SALES; PERSONAL PROPERTY; *Caveat Emptor*; REFUSAL BY
BIDDER TO COMPLY WITH BID; RESALE; LIABILITY OF
HIGH BIDDER AT FIRST SALE

The doctrine of *Caveat Emptor* applies to execution sales of personal property.

JURIES; JURORS

13 March 1962

JURIES, JURORS; FEES; MUNICIPAL RECORDER'S COURT

The jury fees and jury deposit in a municipal recorder's court are the same as in a justice of the peace court with respect to offenses within a J. P.'s jurisdiction. In a case not within a J. P.'s jurisdiction the jury deposit should equal the county superior court juror's pay-per-day multiplied by the number of jurors summoned and the jurors should be paid at the same rate as if serving in the superior court of the county. The above opinion applies to criminal cases.

5 July 1961

JURIES; JURORS; JURY DUTY EXEMPTIONS

Under the provisions of G. S. 9-19 officers and employees of a State hospital for the insane are exempt from service as jurors. This exemption applies to jury duty whether drawn for a regular term or by special venire.

LABOR

23 April 1962

LABOR; DEPARTMENT OF LABOR; MAXIMUM WORKING HOURS; FIFTY-FIVE HOURS' WORK WEEK FOR WOMEN; EFFECT OF CODIFICATION OF LAWS; STATUTES IN PARI MATERIA

G. S. 95-17 must be construed along with G. S. 95-26; under G. S. 95-17 the maximum hours for women employees are 48 hours in any one week but female office workers are exempt from this section; under G. S. 95-26 women employees may not be worked more than 55 hours in any one work week where such employees are over 16 years of age. When G. S. 95-17 and G. S. 95-26 are construed together, women employees who are office workers may not be required to work more than 55 hours in any work week.

6 November 1961

LABOR; MINIMUM WAGE ACT; ABC BOARD NOT SUBJECT TO MINIMUM WAGE ACT; ABC NET PROFITS

Local county ABC board is not subject to Minimum Wage Act, Article 11 of Chapter 95 of the General Statutes.

County ABC Board may, in its discretion, expend for education as to the effects of the use of alcoholic beverages and for the rehabilitation of alcoholics, not more than 5% of its total profits, G. S. 18-45. Total profits are total receipts less general operating expenses. Amounts required to be expended for law enforcement and retained as sufficient and proper working capital are not general operating expenses.

17 August 1961

LABOR; MINIMUM WAGE ACT; DISTRIBUTIVE EDUCATION AND DIVERSIFIED OCCUPATIONS STUDENTS ENROLLED IN PUBLIC SCHOOLS

A Distributive Education or Diversified Occupations student, a person regularly enrolled in the North Carolina public schools and attending school part-time and working on a part-time basis, at some craft or trade, is not an "employee" within the meaning of that term as it is used in the North Carolina Minimum Wage Act and would not be subject to the Act. G. S. 95-86(c) (6).

2 October 1961

LABOR; MINIMUM WAGE ACT; EXEMPTIONS; HOTEL EMPLOYEE WORKING IN KITCHEN AS COOK AND AS WAITER

A person employed in a hotel as a cook and part-time waiter is not exempt from the provisions of the Minimum Wage Law.

27 April 1962

LABOR; RIGHT-TO-WORK STATUTE; CLOSED SHOP; VOLUNTARY CHECK-OFF OF UNION DUES; EMPLOYEES VOLUNTARILY SIGNING AUTHORIZATION TO EMPLOYER FOR DEDUCTION OF UNION DUES FOR A PERIOD OF ONE YEAR; ESCAPE CLAUSE; AUTOMATIC RENEWAL OF CONTRACT

A voluntary agreement between an employee and his employer authorizing a check-off of union dues for a period of one year is valid and legal; clauses for the deduction of initiation fees and requiring automatic renewal of the authorization, unless the employee gives timely notice for the necessary number of days as required by the authorization, are unreasonable and invalid.

LOTTERIES

21 July 1960

LOTTERIES; ILLEGAL SLOT MACHINES; DISPOSITION

Illegal slot machines may be confiscated and destroyed.

MARRIAGE

3 August 1961

MARRIAGE; AUTHORITY TO PERFORM MARRIAGE CEREMONIES

Unless a pastor of a church is an ordained minister of the gospel or is specifically authorized by his church to perform marriage ceremonies, he may not do so.

14 March 1961

MARRIAGE; CORRECTION OF NAMES ON MARRIAGE CERTIFICATE

An error in a person's name on a marriage certificate may be corrected by making application to the register of deeds of the county where the marriage ceremony was performed.

10 August 1960

MARRIAGE; COUNTY IN WHICH LICENSE IS TO BE OBTAINED

Under G. S. 51-6, as amended by the 1959 General Assembly, a marriage license is valid only in the county of the register of deeds who issued the license.

1 June 1961

**MARRIAGE; DIVORCE; NO WAITING PERIOD AFTER FINAL DECREE
OF DIVORCE**

In those cases where there has been a final decree of divorce granted in a divorce proceedings properly and legally obtained in this or a foreign state, either party to the proceedings may immediately marry in North Carolina.

4 January 1961

**MARRIAGE; INTER-RACIAL MARRIAGE RESTRICTIONS; IF MARRIAGE
VALID WHERE CELEBRATED, IT IS VALID IN THIS STATE**

The old case of *STATE v. ROSS*, 76 N. C. 242, holds that a marriage, solemnized in a state whose laws permit such marriage, between a Negro and a white person domiciled in such state, is valid in North Carolina. The above case is cited with approval in the case of *WOODARD v. BLUE*, 103 N. C. 109.

24 March 1961

MARRIAGE; MARRIAGE BY PROXY

North Carolina law does not authorize proxy marriage ceremonies in this State.

10 August 1961

**MARRIAGE; PARENT'S CONSENT UNNECESSARY WHEN CHARGED
WITH CARNAL KNOWLEDGE**

In a case where a twenty-year-old boy is charged with carnal knowledge of a fifteen-year-old girl under G. S. 14-26, no parent's consent is necessary in order for the couple to marry because the same is specifically provided by G. S. 14-27.

MERIT SYSTEM COUNCIL

21 July 1960

**MERIT SYSTEM COUNCIL; EMPLOYEES OF LOCAL HEALTH DEPARTMENTS;
COMPLIANCE WITH MERIT SYSTEM LAW COMPULSORY**

The State merit system law is mandatory with respect to local health department employees and compliance therewith is not optional with the county.

MORTGAGES AND DEEDS OF TRUST

30 November 1961

MORTGAGES AND DEEDS OF TRUST; CANCELLATION; AUTHORITY OF "CREDIT MANAGER" TO MARK TO SATISFACTION FOR CORPORATION

A mortgage marked satisfied by the "credit Manager" and exhibited to the register of deeds for cancellation of record is insufficient authority to the register to permit him to cancel the same of record unless there is a power of attorney to the named credit manager on record.

24 October 1960

MORTGAGES AND DEEDS OF TRUST; FORECLOSURE; FEES AND COSTS; ATTORNEY'S FEES

A Clerk of the Superior Court might, in his discretion, allow attorney's fees in a deed of trust foreclosure under the power of foreclosure contained in the deed of trust if the foreclosure presented unusual problems requiring the services of an attorney and if the deed of trust itself did not prohibit such fees.

MOTOR VEHICLES

5 July 1960

MOTOR VEHICLES; CAMPUS POLICE OFFICERS; RIGHT OF TRUSTEES TO MAKE RULES AND REGULATIONS

The General Assembly could constitutionally delegate to the Trustees of Appalachian State Teachers College authority to adopt rules and regulations for the control and use of streets, alleys and parking areas on the campus, and prescribe that violations of same shall constitute a misdemeanor. The General Assembly may also provide by proper legislation that the provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are made applicable to the streets, alleys and driveways on the campus of Appalachian State Teachers College.

12 December 1960

MOTOR VEHICLES; CERTIFICATION OF SCHOOL BUS DRIVERS; SCHOOL BUSES OPERATED BY STATE AND COUNTY SUPPORTED SCHOOL FOR EXCEPTIONAL CHILDREN

Station wagons used by a school for exceptional children to pick up and deliver students to and from school daily are school buses within

the meaning of G. S. 20-218 and the operators thereof are required to hold a school bus driver's certificate from the Department of Motor Vehicles in order to lawfully operate the same upon the highways.

10 August 1961

**MOTOR VEHICLES; COURTS; JURISDICTION OF MAYOR'S COURT OVER
OFFENSE OF NO OPERATOR'S LICENSE**

The mayor of a town has no jurisdiction over the offense of no operator's license in his capacity as a magistrate inasmuch as the punishment therefor may exceed a fine of \$50.00 or imprisonment for 30 days.

17 May 1961

**MOTOR VEHICLES; COURTS; JURISDICTION OF MAYOR OVER MOTOR
VEHICLE LAW AND CITY ORDINANCE VIOLATIONS**

Mayors of incorporated towns are by virtue of G. S. 160-13 constituted inferior courts and within the corporate limits of such towns have the jurisdiction of a justice of the peace in all criminal matters arising under the laws of the State or under ordinances of the town. Justices of the peace by virtue of G. S. 7-129 have exclusive, original jurisdiction of criminal offenses wherein the punishment prescribed by law does not exceed a fine of \$50.00 or imprisonment for 30 days. Whether or not the mayor of an incorporated town has jurisdiction to try any particular offense will depend upon the punishment provided therefor in the statute or ordinance involved.

4 January 1961

**MOTOR VEHICLES; CRIMINAL LAW; ELEMENTS OF RACING
ON STREETS AND HIGHWAYS**

Unlawful speeding within the meaning of G. S. 20-141 is not an element of the various offenses of motor vehicle racing described in G. S. 20-141.3.

30 January 1962

MOTOR VEHICLES; CRIMINAL LAW; VIOLATIONS OF STATUTES

G. S. 20-141 is a criminal statute and violations of its provisions constitute criminal offenses.

21 June 1961

**MOTOR VEHICLES; CRIMINAL PROCEDURE; WARRANTS; CITATIONS;
UNIFORM TRAFFIC TICKET; USE OF UNIFORM TRAFFIC TICKET NOT
COMPULSORY BUT TICKET VALID WHEN USED AS WARRANT**

Use of the Uniform Traffic Ticket by local law enforcement officials either as a citation or as a warrant is not compulsory. However, if the same is used either as a citation or as a warrant, or both, the same would be valid and enforceable when properly completed and executed.

13 July 1961

MOTOR VEHICLES; CRIMINAL PROCEDURE; WARRANTS; CITATIONS;
UNIFORM TRAFFIC TICKET; USE OF UNIFORM TRAFFIC TICKET NOT
COMPULSORY BUT TICKET VALID WHEN USED AS WARRANT;
FEE FOR ISSUANCE

The uniform ticket, when properly completed and executed, is valid as a warrant in Justice of the Peace Courts as in others and the justice of the peace, as issuing magistrate, is entitled to the same fees for issuance of the warrants as for any other arrest warrants.

26 April 1961

MOTOR VEHICLES; DRIVER EDUCATION COURSES; COMPELLING PERSONS
CONVICTED OF MOTOR VEHICLE LAW VIOLATIONS TO ATTEND
DRIVER EDUCATION COURSES

The trial court may as a condition to a suspended sentence require the defendant to attend a driver education course and pay the expenses thereof. The trial court has, however, no authority to otherwise compel motor vehicle law violators to attend driver education courses by any order in the nature of a sentence, for in imposing judgment in motor vehicle law violation cases the court is limited to a fine or imprisonment or both as may be appropriate for the particular offense concerned.

24 January 1962

MOTOR VEHICLES; DRIVER'S LICENSE; CHAUFFEUR'S LICENSE;
DRIVER OF MUNICIPAL FIRE TRUCK

An employee of a municipal fire department who is employed principally for the purpose of driving a motor vehicle is required to hold a valid chauffeur's license. G. S. 20-6.

9 May 1962

MOTOR VEHICLES; DRIVER'S LICENSE; CHAUFFEUR'S LICENSE; HAULER
OF PROPERTY FOR HIRE

A person who owns a truck and operates it himself for compensation is required to possess a valid chauffeur's license.

16 June 1961

MOTOR VEHICLES; DRIVER'S LICENSE; CHAUFFEURS' LICENSES; OPER-
ATION OF PROPERTY HAULING VEHICLE LICENSED FOR MORE THAN
20,000 POUNDS BY MEMBER OF PARTNERSHIP OWNING VEHICLE

The definition of "Chauffeur" for the purpose of the North Carolina Driver's License Act found at G. S. 20-6 excludes the owners of property hauling vehicles or combinations thereof licensed for more than 20,000 pounds gross weight. This exclusion contemplates and would include any one or more actual legal owners of a vehicle, including one or more of the partners when a motor vehicle belongs to a partnership.

9 December 1960

MOTOR VEHICLES; DRIVER'S LICENSE; CHAUFFEURS' LICENSES;
SCHOOL ACTIVITY BUS

A 37-passenger bus owned by the University of North Carolina Athletic Association and used to transport athletic teams to various contests in and outside North Carolina is a school activity bus and the operator thereof is required to either be licensed as a chauffeur or hold a school bus driver's certificate in order to lawfully operate the same upon the highways.

28 November 1961

MOTOR VEHICLES; DRIVER'S LICENSE; COMMITMENT TO HOSPITAL
FOR MENTALLY DISORDERED

A commitment for a period of observation, under G. S. 122-67, is not an adjudication of insanity and the clerk is not required by G. S. 20-17.1(c) to forward a copy of this proceeding to the Commissioner of Motor Vehicles. A commitment for an indefinite period entered at the conclusion of the period of observation would, however, be an adjudication of insanity, requiring compliance with G. S. 20-17.1(c).

11 July 1960

MOTOR VEHICLES; DRIVER'S LICENSE; DRIVING AFTER LICENSE RE-
VOKED; NOT CRIMINAL OFFENSE IN NORTH CAROLINA TO OPERATE
MOTOR VEHICLE AFTER LICENSE REVOKED IN ANOTHER STATE BUT
NOT IN NORTH CAROLINA

Suspension or revocation of the operator's license under the provisions of Chapter 20 of the General Statutes is an element of the offense of operating a motor vehicle while license is suspended or revoked under G. S. 20-28 and must be shown in order to sustain a conviction of that offense. Where the evidence tends to show that the operator's license of an individual charged with driving after license suspended or revoked was not suspended by the State of North Carolina pursuant to Chapter 20 of the General Statutes, the individual concerned would not be guilty of a violation of G. S. 20-28 even though his out-of-state operator's license may have been suspended or revoked by that State.

15 September 1961

MOTOR VEHICLES; DRIVER'S LICENSE; DRUNKEN DRIVING;
DRIVING WHILE LICENSE REVOKED

A conviction in the Federal courts of drunken driving in violation of Title 18, Section 13 of the United States Code, which assimilates the provisions of North Carolina criminal law into the Federal law, does not constitute a prior offense of drunken driving for purposes of determining whether or not punishment can be imposed for a second offense since

G. S. 20-179 refers directly to and is expressly dependent upon a prior conviction or convictions of G. S. 20-138.

However, where the Department of Motor Vehicles has revoked an operator's license upon receiving notice of a conviction of drunken driving in the Federal courts and the licensee ignores the revocation and continues to drive, then he may properly be charged with driving while license revoked.

2 March 1961

MOTOR VEHICLES; DRIVER'S LICENSE; DRUNKEN DRIVING; NARCOTIC
DRUGS; PARALDEHYDE, NOT NARCOTIC DRUG

Paraldehyde is not considered a narcotic drug. Therefore, proof of operating a motor vehicle while under the influence of Paraldehyde would not support a conviction for operating a motor vehicle while under the influence of a narcotic drug.

13 September 1960

MOTOR VEHICLES; DRIVER'S LICENSE; FARM TRACTORS

Where a tractor, although designed for use as a farm implement, is not primarily so used, the driver thereof is required to be licensed under the North Carolina Uniform Driver's License Act in order to operate the vehicle upon the highways.

20 December 1960

MOTOR VEHICLES; DRIVERS' LICENSES; FINAL CONVICTION;
PRAYER FOR JUDGMENT CONTINUED

When prayer for judgment is continued in a criminal case upon no conditions or upon payment of the costs only, there is no final judgment from which an appeal might lie and consequently no final conviction within the meaning of the North Carolina Uniform Driver's License Act, G. S. 20-24(c). However, where prayer for judgment is continued upon payment of a fine or other conditions, there is a final determination of the case by entry of an appealable judgment and a final conviction within the meaning of the North Carolina Uniform Driver's License Act, G. S. 20-24(c), and the declaration that "prayer for judgment is continued" will be considered surplusage.

2 August 1960

MOTOR VEHICLES; DRIVER'S LICENSE; GOLF CARTS; ELECTRICALLY
OPERATED GOLF CARTS

An electrically operated golf cart is a motor vehicle within the meaning of the registration and licensing provisions of the North Carolina Motor Vehicle Laws and unless specifically exempted by some provision thereof is required by G. S. 20-50 to be registered and licensed when operated

upon the highways. Prerequisites to such registration are compliance with the Financial Responsibility Act of 1957, G. S. 20-309, *et seq.*, as well as the requirements of Part 9 of Article 3 of Chapter 20 of the General Statutes relating to size, weight, construction and equipment of vehicles.

An electrically operated golf cart is also a motor vehicle within the meaning of the driver's license provisions of the North Carolina Motor Vehicle Laws and, unless specifically exempted, the operator thereof is required by G. S. 20-37 to be licensed when such vehicle is operated upon the highways. If an unlicensed person operates a golf cart upon the highways, such operation would be violative of G. S. 20-7(k) and the operator would be guilty of a misdemeanor for driving without a license.

15 November 1960

MOTOR VEHICLES; DRIVERS' LICENSES; NEW RESIDENTS; NECESSITY
OF NEW RESIDENTS TO OBTAIN OPERATOR'S LICENSE

New residents of North Carolina are required to hold valid North Carolina operators' licenses in order to operate motor vehicles over the highways of this State unless exempted by some provision contained in G. S. 20-8. There is no grace period during which such new residents of this State can drive on the basis of operators' licenses valid in some other State.

13 July 1961

MOTOR VEHICLES; DRIVERS' LICENSES; NONRESIDENTS COMMUTING
TO NORTH CAROLINA FOR WORK

A bona fide resident of South Carolina whose automobile is properly registered in that state and who holds a valid operator's license from that state, need not register his vehicle in North Carolina nor obtain a North Carolina operator's license merely because he leaves his family in South Carolina and commutes to a city located in this State to work during the week, returning home each weekend.

29 August 1961

MOTOR VEHICLES; DRIVERS' LICENSES; POINT SYSTEM;
NOLO CONTENDERE

It is not appropriate for the Department of Motor Vehicles to assess points for convictions based upon plea of nolo contendere for purposes of the "point system" provisions of the Uniform Driver's License Act [G. S. 20-16(a) (5) and (c)]. This opinion modifies in part the opinion expressed in a letter to the Honorable J. A. Rogers, Judge, Grifton Recorder's Court, on March 4, 1960.

16 September 1961

MOTOR VEHICLES; DRIVER'S LICENSES; REGISTRATION AND LICENSING;
SPECIAL MOBILE EQUIPMENT; SAFETY AND FINANCIAL RESPONSIBILITY
ACT OF 1953 AND VEHICLE RESPONSIBILITY ACT OF 1957

A motor vehicle which has been so altered as to have no further practical use for the transportation of persons or property, but has had mounted thereon a wood saw, is considered special mobile equipment and as such is subject to registration and licensing under the provisions of G. S. 20-87(j). The operator of special mobile equipment is required to be licensed under the Uniform Driver's License Act in order to operate the same upon the public highways. The term "Motor Vehicle" as used in the Motor Vehicle Safety and Financial Responsibility Act of 1953 and the Vehicle Financial Responsibility Act of 1957 includes special mobile equipment and the same cannot be registered and a license plate issued therefor without a showing by the owner of proof of financial responsibility.

18 July 1961

MOTOR VEHICLES; DRIVERS' LICENSES; REVOCATION OF LICENSES;
USE OF MOTOR VEHICLE IN COMMISSION OF A FELONY

The driver's license of one who is convicted of the arson of a motor vehicle is not thereby subject to revocation under the mandatory provisions of G. S. 20-17(3) for use of a motor vehicle in commission of a felony.

30 March 1961

MOTOR VEHICLES; DRIVERS' LICENSES; SPEEDING

The mandatory provisions of G. S. 20-16.1 do not compel the suspension of an operator's license when such operator is convicted of driving 55 miles per hour in a 35 mile-per-hour zone, nothing else appearing.

15 December 1960

MOTOR VEHICLES; DRIVER'S LICENSE; SUSPENSION; DRIVING
WHILE LICENSE IS SUSPENDED

A charge of driving while license is suspended is proper where an individual has been apprehended operating a motor vehicle while his license is suspended under the provisions of G. S. 20-279.13 for nonpayment of a civil judgment arising out of the operation of a motor vehicle, such conduct being a misdemeanor under the provisions of G. S. 20-28.

3 January 1962

MOTOR VEHICLES; EQUIPMENT AND CONSTRUCTION; DEFINITION
OF THE WORD "BODY"

The word "body" as used in connection with motor vehicles does not encompass the wheels or bumpers of the vehicle.

18 September 1961

MOTOR VEHICLES; EQUIPMENT AND CONSTRUCTION, HORNS AND
WARNING DEVICES; SIREN ON NONMOTORIZED BICYCLE

It is unlawful for any nonmotorized bicycle to be equipped with a siren or for any person to use a siren on such a bicycle unless they are otherwise authorized so to do under one or more of the provisions of G. S. 20-125(b).

22 February 1962

MOTOR VEHICLES; EQUIPMENT AND CONSTRUCTION; LIGHTING
EQUIPMENT; OPERATION DURING DAYLIGHT HOURS

Lighting equipment required by G. S. 20-129.1 must be carried by motor vehicles operated during daylight hours.

20 March 1961

MOTOR VEHICLES; EQUIPMENT; LIGHTING AND SIGNAL EQUIPMENT
REQUIRED FOR TWO-WHEEL TRAILERS OPERATED BY NORTH
CAROLINA STATE HIGHWAY COMMISSION

Small two-wheel trailers approximately 66 inches wide, 58 inches high, 67 inches long plus tongue, weighing approximately 1200 pounds and operated by the State Highway Commission in connection with patching highways, known as "tar kettles", are required by statute to be equipped with turn signals if manufactured or assembled after July 1, 1953, or if the distance from the top of the steering post to the left outside limit of the load exceeds 24 inches or if the distance from the top of the steering wheel to the end of the load exceeds 14 feet. In addition, the above-described trailers must be equipped with two rear red reflectors and a stop light, the latter being required only if the trailer or load obscures the stop light on the towing vehicle.

2 August 1960

MOTOR VEHICLES; GOLF CARTS; ELECTRICALLY OPERATED GOLF CARTS;
MOTOR VEHICLE REGISTRATION AND DRIVER'S LICENSE LAWS

An electrically operated golf cart is a motor vehicle within the meaning of the registration and licensing provisions of the North Carolina Motor Vehicle Laws and unless specifically exempted by some provision thereof is required by G. S. 20-50 to be registered and licensed when operated upon the highways. Prerequisites to such registration are compliance with the Financial Responsibility Act of 1957, G. S. 20-309, *et seq.*, as well as the requirements of Part 9 of Article 3 of Chapter 20 of the General Statutes relating to size, weight, construction and equipment of vehicles.

An electrically operated golf cart is also a motor vehicle within the meaning of the driver's license provisions of the North Carolina Motor Vehicle Laws and, unless specifically exempted, the operator thereof is

required by G. S. 20-37 to be licensed when such vehicle is operated upon the highways. If an unlicensed person operates a golf cart upon the highways, such operation would be violative of G. S. 20-7(k) and the operator would be guilty of a misdemeanor for driving without a license.

14 September 1961

MOTOR VEHICLES; JUDGE'S CHARGE; INSTRUCTION WHERE DEFENDANT
CHARGED WITH SPEEDING MORE THAN 80 MILES PER HOUR

Regardless of whether in a strict sense a violation of G. S. 20-141 (speeding) without a further finding with respect to the rate of speed involved would be deemed a lesser degree of the crime of violating G. S. 20-141 by speeding in excess of 80 miles per hour, it is nonetheless necessary and proper that the jury be given the opportunity under proper instructions to find a verdict of speeding at the greater rate of speed or at the lesser rate of speed if the State fails to prove the greater. In order that the more severe penalty of speeding in excess of 80 miles per hour can be imposed the jury must find as a part of their verdict that the speeding was of such degree, but if they do not so find, that does not end the case for they should be so instructed that they can return a verdict of simply speeding in excess of the lawful limits, in violation of G. S. 20-141 and punishable as provided in G. S. 20-176(b).

22 July 1960

MOTOR VEHICLES; RECORDS; AUTHORITY TO FURNISH ABSTRACT
COPIES OF RECORDS RELATING TO OPERATOR'S LICENSE AND
CHARGE A FEE THEREFOR

The Department of Motor Vehicles is authorized under provisions of G. S. 20-26 to furnish abstract copies of operator's license records upon request to insurance companies and others having a need therefor and to charge a fee for such service not to exceed \$1.00.

27 September 1961

MOTOR VEHICLES; REGISTRATION; COMMUNITY COLLEGES; PERMANENT
LICENSING OF VEHICLES

Inasmuch as community colleges are institutions established under the General Statutes by local governmental authorities and are governed by trustees appointed by and responsible to several of the various governmental units whose vehicles are entitled to permanent licensing, then the community college itself is entitled to permanent licensing of its vehicles.

14 July 1960

MOTOR VEHICLES; REGISTRATION; FARM TRAILERS

Under certain circumstances farm trailers are not required to be registered. Whether or not a given farm trailer is required to be licensed depends largely upon the use to which it is put and the applicability

of G. S. 20-51 exempting some farm trailers from registration and licensing.

Trailers and semi-trailers attached to farm tractors equipped with rubber tires need not be licensed when used by a farmer, his tenant, agent or employee when transporting his own farm implements, supplies or products from place to place on the same farm although they might coincidentally travel upon some portion of the highway, under the provision of G. S. 20-51.

No farm tractor as defined by statute, that is one actually designed and operated in connection with a farming operation, need be licensed if equipped with rubber tires and unless operated on a for-hire basis. Likewise, no farm tractor whether equipped with rubber tires or not need be licensed if designed for use in work off the highway and operated on the highway only for the purpose of going to and from such non-highway projects. No farm tractor need be licensed if operated on the highway only for the purpose of crossing the same. Tractors, other than farm tractors as defined by statute, must be licensed unless falling within one of the statutory exemptions.

13 July 1961

MOTOR VEHICLES; REGISTRATION; DRIVERS' LICENSES; NONRESIDENTS COMMUTING TO NORTH CAROLINA FOR WORK

A bona fide resident of South Carolina whose automobile is properly registered in that state and who holds a valid operator's license from that state, need not register his vehicle in North Carolina nor obtain a North Carolina operator's license merely because he leaves his family in South Carolina and commutes to a city located in this State to work during the week, returning home each weekend.

4 August 1960

MOTOR VEHICLES; REGISTRATION BY NONRESIDENTS; NONRESIDENTS COMMUTING TO NORTH CAROLINA TO WORK

A person who maintains his residence and domicile in South Carolina and commutes to North Carolina for the purpose of employment, returning to South Carolina at the end of each day or at the end of each week falls within the provisions of the general reciprocity agreement between the States of North Carolina and South Carolina and is not, therefore, required to register his motor vehicle in North Carolina.

If, however, the individual does not return home at least weekly, then he would not fall within the provisions of the reciprocity agreement and would be required to register his motor vehicle in this State regardless of his legal residence.

30 March 1961

MOTOR VEHICLES; REGISTRATION; REQUIREMENT OF NONRESIDENT TO PURCHASE CITY TAGS

The residence of the owner of a motor vehicle is not directly material upon the question of whether or not a city license tag must be purchased

for any given vehicle under the provisions of G. S. 20-97, the question being rather whether or not the vehicle is principally garaged in the city issuing the license tag coupled with whether or not the vehicle is or should be registered and licensed by the State of North Carolina. The residence of the owner of the vehicle may, of course, be material upon the latter criteria.

16 February 1961

MOTOR VEHICLES; REGISTRATION; SPECIAL MOBILE EQUIPMENT;
BUS EQUIPPED AS ROLLING PHOTOGRAPHIC STUDIO

Bus equipped as a rolling studio for photographer is not "Special Mobile Equipment", as the same is defined in G. S. 20-38(bb) and does not qualify for the special motor vehicle license tax rate under G. S. 20-87(j).

30 April 1962

MOTOR VEHICLES; REGISTRATION; SPECIAL MOBILE EQUIPMENT;
LOGGING VEHICLE

A reconstructed self-propelled vehicle designed for towing logs in the woods must comply with the registration and equipment requirements of Chapter 20 of the General Statutes of North Carolina even though such vehicle is only used on the highways occasionally.

16 September 1960

MOTOR VEHICLES; REGISTRATION; SPECIAL MOBILE EQUIPMENT; WOOD
SAW MOUNTED ON AUTO; SAFETY AND FINANCIAL RESPONSIBILITY
ACT OF 1953 AND VEHICLE RESPONSIBILITY ACT OF 1957

A motor vehicle which has been so altered as to have no further practical use for the transportation of persons or property, but has had mounted thereon a wood saw, is considered special mobile equipment and as such is subject to registration and licensing under the provisions of G. S. 20-87(j). The operator of special mobile equipment is required to be licensed under the Uniform Driver's License Act in order to operate the same upon the public highways. The term "Motor Vehicle" as used in the Motor Vehicle Safety and Financial Responsibility Act of 1953 and the Vehicle Financial Responsibility Act of 1957 includes special mobile equipment and the same cannot be registered and a license plate issued therefor without a showing by the owner of proof of financial responsibility.

12 December 1961

MOTOR VEHICLES; RULES OF THE ROAD; FOUR-WAY STOP AT
INTERSECTION

Local authorities may enact ordinances authorizing the erection of stop signs at all four entrances at an intersection within the corporate limits of the town.

22 August 1960

**MOTOR VEHICLES; RULES OF THE ROAD; HIT AND RUN STATUTE;
APPLICABILITY TO ACCIDENTS OCCURRING ON PRIVATE PROPERTY**

The provisions of G. S. 20-166 relating to the so-called hit and run statute and requiring the driver of any vehicle involved in an accident or collision resulting in death, personal injury or property damage to stop at the scene of the accident or collision, render aid to those needing it, and furnish certain information to persons in any other car involved, to the person whose property is damaged or to the nearest available peace officer, is not limited to accidents and collisions occurring on the highway, but applies with equal force to any accident or collision involving any motor vehicle occurring off the highway where there is resultant death, personal injury or property damage as described in the statute.

10 March 1961

**MOTOR VEHICLES; RULES OF THE ROAD; PEDESTRIANS WALKING ON
SHOULDERS OF HIGHWAY**

G. S. 20-174(d), which makes it unlawful for pedestrians to walk along the traveled portion of a highway except on the extreme lefthand side thereof, does not make it unlawful for a pedestrian to walk on the right-hand shoulder or right-hand unpaved portion of a paved highway inasmuch as the shoulder is intended for emergency use only and is not a part of the highway intended for ordinary travel.

6 October 1960

**MOTOR VEHICLES; RULES OF THE ROAD; RECKLESS DRIVING; STREETS
AND HIGHWAYS; APPLICABILITY OF THE RULES OF THE ROAD
TO A NONDEDICATED ROAD**

The reckless driving statute, G. S. 20-140, is applicable to the operation of a motor vehicle upon any street or highway which is as a matter of fact open to the unrestricted use of the public at large, whether or not the State of North Carolina maintains the road and regardless of whether the same is open to actual use by the general public by prescription, dedication or otherwise.

16 November 1961

**MOTOR VEHICLES; RULES OF THE ROAD; SPEEDING; ADMISSIBILITY
OF SPEED WATCH AND RADAR EVIDENCE**

Evidence obtained through use of radar or other mechanical speed measuring devices is admissible in speeding cases upon a showing that the equipment used was tested and found to be accurate at the location where it was placed.

7 July 1961

MOTOR VEHICLES; RULES OF THE ROAD; SPEEDING; AUTHORITY OF
MUNICIPALITIES TO REGULATE SPEED ON STATE HIGHWAYS

A municipality under G. S. 20-141(f) has authority to reduce the statutory speed limit on State-maintained highways within their jurisdiction at intersections within the vicinity of public, private or parochial schools or recreational areas on the basis of an engineering and traffic investigation.

28 February 1961

MOTOR VEHICLES; RULES OF THE ROAD; SPEEDING; MUNICIPAL
ORDINANCES; POWER OF LOCAL AUTHORITIES TO FIX SPEED LIMITA-
TIONS ON STREETS NOT A PART OF THE STATE HIGHWAY SYSTEM

Local authorities may under the provisions of G. S. 20-141(f) and in their discretion fix by ordinance speed limits deemed safe and proper on streets within their jurisdictions which are not maintained by the State Highway Commission without regard to whether such streets have fronting on them residential districts within the meaning of G. S. 20-38(w)1. Speed limits so fixed may not be less than 25 miles per hour and are not effective until signs have been erected giving notice of the speed limits on such streets.

17 February 1961

MOTOR VEHICLES; RULES OF THE ROAD; SPEEDING; PUNISHMENT;
IN EXCESS 80 MILES AN HOUR

The punishment applicable upon conviction of speeding in excess of 80 miles per hour is a fine of not less than \$50.00 or imprisonment for not more than 2 years or both in the discretion of the court under the provisions of G. S. 20-180.

30 March 1961

MOTOR VEHICLES; RULES OF THE ROAD; SPEEDING
35 MILE-PER-HOUR ZONE

The mandatory provisions of G. S. 20-16.1 do not compel the suspension of an operator's license when such operator is convicted of driving 55 miles per hour in a 35 mile-per-hour zone, nothing else appearing.

12 September 1960

MOTOR VEHICLES; TITLE AND REGISTRATION, DEALERS; VEHICLE
FINANCIAL RESPONSIBILITY ACT OF 1957

An automobile, which has been sold by a dealer and is operated by the new owner for a short period of time with Dealer plates thereon, is no longer covered with liability insurance under the insurance policy of the

automobile dealer, and it is unlawful for the new owner to operate the motor vehicle in this State without having in full force and effect the financial responsibility required by the Vehicle Financial Responsibility Act of 1957.

13 July 1961

**MOTOR VEHICLES; TITLE AND REGISTRATION; DRIVERS' LICENSES;
NONRESIDENTS COMMUTING TO NORTH CAROLINA FOR WORK**

A bona fide resident of South Carolina whose automobile is properly registered in that state and who holds a valid operator's license from that state, need not register his vehicle in North Carolina nor obtain a North Carolina operator's license merely because he leaves his family in South Carolina and commutes to a city located in this State to work during the week, returning home each weekend.

22 August 1960

**MOTOR VEHICLES; TITLE AND REGISTRATION; FOR HIRE; COMPUTATION
OF MILEAGE IN NORTH CAROLINA FOR PURPOSE OF ALLOCATION;
PEDDLE MILES**

So-called "peddle" miles, that is additional route miles run, not necessary to the hauls but for the convenience of the carrier in routing operations, are properly includable in the percentage allocation computation of mileage driven in connection with interstate hauls for the purpose of the North Carolina 6% gross receipts tax on common carriers of property imposed by G. S. 20-88(e).

22 August 1960

**MOTOR VEHICLES; TITLE AND REGISTRATION; MULTI-USE TRAILER
AS IMPLEMENT OF HUSBANDRY**

A multi-use trailer, owned and operated by a company engaged in the manufacture and distribution of fertilizer material, the operation of a cotton gin and the operation of certain farm properties, is not an implement of husbandry within the meaning of G. S. 20-38(k) when loaned out during a part of the year for spreading of liquid nitrogen, loaned out during another part of the year for hauling unginned cotton to the gin, and used during other parts of the year to haul water on farms operated by the company since such uses constitute various facets of the company's commercial operation and the trailer is not therefore used exclusively in the conduct of agricultural operations within the meaning of G. S. 20-38(k).

9 September 1960

**MOTOR VEHICLES; TITLE AND REGISTRATION; VEHICLES OWNED BY
NORTH CAROLINA RESIDENTS**

Where persons maintain their families at a place in this State and keep tractors and trailers owned by them parked at such place when not

in use and follow the produce season from Florida to Maryland and haul produce to northern and western markets and the tractors and trailers remain for only a short time at the place where the owners and their families reside within this State, the owners are residents of North Carolina and their tractors and trailers and other tangible personal property must be listed for ad valorem taxation in the township where such owners have their residence, and the tractors and trailers are required by the North Carolina Motor Vehicle Laws to be registered and licensed in this State.

29 November 1960

MOTOR VEHICLES; VEHICLE FINANCIAL RESPONSIBILITY ACT OF 1957;
AUTHORITY OF STATE HIGHWAY PATROLMEN TO SEIZE LICENSE PLATES
CANCELLED UNDER THE VEHICLE FINANCIAL RESPONSIBILITY ACT OF
1957; AUTHORITY OF STATE HIGHWAY PATROLMEN TO ARREST WITH-
OUT WARRANT ONE WHO REFUSES TO SURRENDER PLATES

State Highway Patrolmen engaged in the service of Form FS-7, a so-called pickup order directing such patrolmen to obtain the registration card and license plates of a vehicle where vehicle financial responsibility has not been maintained as required by the Vehicle Financial Responsibility Act of 1957, has authority under the provisions of G. S. 20-45 and G. S. 20-63(a) as agents of the Commissioner of Motor Vehicles to seize and remove registration certificates and license plates in the course of service of the Form FS-7 without first procuring any criminal warrant. Such authority extends to seizure of plates without warrant anywhere in the State of North Carolina whether on private property or otherwise.

Whenever an individual refuses to surrender his registration certificate and license plates upon service of a Form FS-7, such refusal constitutes a misdemeanor within the meaning of G. S. 15-41 authorizing the State Highway Patrolman, as a peace officer, to arrest such person without a warrant for commission of a misdemeanor in his presence.

3 October 1960

MOTOR VEHICLES; VEHICLE FINANCIAL RESPONSIBILITY ACT OF 1957;
FAILURE OF OWNER TO DELIVER CERTIFICATE OF REGISTRATION AND
PLATES AFTER REVOCATION FOR FAILURE TO MAINTAIN
PROOF OF FINANCIAL RESPONSIBILITY

Under the provisions of the Vehicle Financial Responsibility Act of 1957 the law presumes that when proof of financial responsibility is terminated with regard to any motor vehicle, the owner thereof shall forthwith and voluntarily surrender the registration certificate and plates of the vehicle to the Department of Motor Vehicles. If he does not do this and a so-called pickup order is served on him under the provisions of G. S. 20-63, it is then incumbent upon the owner of the motor vehicle to deliver the certificate of registration and registration plates to the officer serving the notice, which delivery would contemplate actual physical delivery. It would not appear that the Legislature intended to impose upon State Highway Patrolmen serving pickup orders the duty of removing license

plates from vehicles to which attached or to take any other action other than serving the order and receiving physical delivery of the registration certificate and plates. Granting permission to the officers serving the pickup order to remove the plates from the vehicle does not constitute delivery within the meaning of G. S. 20-312 and refusal to deliver the certificate of registration and registration plates at the time the pickup order is served constitutes a violation of G. S. 20-312 and is a misdemeanor.

6 October 1960

**MOTOR VEHICLES; VEHICLE FINANCIAL RESPONSIBILITY ACT OF 1957;
MOTORIZED WHEEL CHAIR AS MOTOR VEHICLE**

A motorized wheel chair or similar vehicle authorized to be registered and licensed under the provisions of G. S. 20-37.1 is a motor vehicle within the meaning of the Vehicle Financial Responsibility Act of 1957 and the provisions of that act prohibit the registration of such vehicles in this State unless the owner at the time of registration shows proof of financial responsibility.

16 February 1961

**MOTOR VEHICLES; VEHICLE FINANCIAL RESPONSIBILITY ACT OF 1957;
NOTICE OF CANCELLATION; CANCELLATION REQUESTED UNDER AUTHORITY OF POWER OF ATTORNEY TO PREMIUM FINANCE COMPANY**

When cancellation of motor vehicle liability insurance is made at the request of one holding a valid power of attorney to cancel the insurance under the circumstances giving rise to the request for cancellation, the one holding the power of attorney stands in the position of insured and is his agent and attorney for that purpose. Under these circumstances no notice under the provisions of G. S. 20-310 need be given to the insured of cancellation of the motor vehicle liability insurance affected.

12 September 1960

**MOTOR VEHICLES; VEHICLE FINANCIAL RESPONSIBILITY ACT OF 1957;
TITLE AND REGISTRATION; DEALERS**

An automobile, which has been sold by a dealer and is operated by the new owner for a short period of time with Dealer plates thereon, is no longer covered with liability insurance under the insurance policy of the automobile dealer, and it is unlawful for the new owner to operate the motor vehicle in this State without having in full force and effect the financial responsibility required by the Vehicle Financial Responsibility Act of 1957.

6 December 1960

MOTOR VEHICLES; VOLUNTEER FIREMEN; SIRENS; RIGHTS OF WAY

When a volunteer fireman is actually using his privately-owned vehicle in the performance of his duties as a fireman, there may be installed thereon a red light visible from the front of the vehicle. Only the chief and

assistant chief of a volunteer fire department may use a siren on his privately-owned automobile, and no other volunteer fireman other than the chief or his assistant may do so. Fire department vehicles, that is those actually belonging to the fire department and not individual members thereof, are accorded the right-of-way when the drivers thereof are sounding audible signals by bell, siren or exhaust whistle. However, such right-of-way does not operate to relieve the driver of a fire department vehicle from the duty to drive with due regard for the safety of others using the highway, nor to protect the driver of any such vehicle from the consequence of any arbitrary exercise of such right-of-way. Volunteer firemen operating privately-owned vehicles and traveling to the scene of a fire have no right-of-way superior to other vehicles traveling upon the highway.

MUNICIPAL CORPORATIONS

12 May 1961

MUNICIPAL CORPORATIONS; ABANDONMENT OF STREETS WITHIN NEWLY ANNEXED AREAS BY HIGHWAY COMMISSION

Under the provisions of G. S. 136-66.2 the State Highway Commission may abandon any system streets which were not within a municipality or which were not on the system on July 1, 1959. However, all streets within municipalities which were on the State Highway system and were within the municipality on July 1, 1959, may not be abandoned by the Highway Commission except by agreement between the Highway Commission and the municipality.

9 June 1961

MUNICIPAL CORPORATIONS; ABANDONED ROADWAY—RIGHT OF TOWN TO ISSUE BUILDING PERMIT ON ABANDONED ROADWAY PROPERTY

A town desired to know if the town had any property right in abandoned roadway in order to know whether they could issue or refuse to issue a building permit because of town's property right. They were advised that when roadway is abandoned by the Highway Commission and does not come under G. S. 136-67-Neighborhood Public Roads, it reverts to the owner of the subservient fee and the town has no property right therein.

5 December 1960

MUNICIPAL CORPORATIONS; ACQUISITION AND OPERATION OF OFF-STREET PARKING FACILITIES

A municipal corporation may enter into a 15-year lease for land to be used for an off-street parking facility, but cannot use non-tax revenues other than those derived from the operation of on-street parking meters in connection with operation of the off-street parking facility.

23 August 1961

**MUNICIPAL CORPORATIONS; AD VALOREM TAXATION; COLLECTION;
CUTTING OFF DELINQUENT TAXPAYERS' CITY UTILITY SERVICES**

Municipal corporations of this State operating utility services have no authority to cut off such services in order to enforce collection of ad valorem taxes.

13 October 1961

**MUNICIPAL CORPORATIONS; AD VALOREM TAXES; NEWLY ANNEXED
TERRITORY**

Property annexed by a municipality under Article 36, Subchapter V of Chapter 160 of the General Statutes on or after July 1 of any year and before June 30 of the succeeding year is subject to municipal ad valorem taxation for the fiscal year beginning July 1 of such succeeding year.

30 June 1961

**MUNICIPAL CORPORATIONS; AD VALOREM TAXES; PROPERTY HELD BY
A MUNICIPALITY FOR RENTAL PURPOSES**

Real property held by a municipality for rental purposes is subject to county ad valorem taxation.

26 August 1960

MUNICIPAL CORPORATIONS; ADOPTION OF NEW PLAN OF GOVERNMENT

Where the procedures of Article 21 of Chapter 160 are changed by a special Act of the General Assembly so that the question for the adoption of a different plan of government is submitted to the voters without necessity of requiring a petition signed by 25% of the qualified voters, a different plan of government may be adopted at a subsequent time by following the procedures of Article 21 of Chapter 160.

3 August 1960

**MUNICIPAL CORPORATIONS; APPROPRIATIONS; FUNDS FOR HIGH
SCHOOL BAND UNIFORMS**

A municipality does not have authority to make appropriations for the purchase of high school band uniforms.

23 September 1960

**MUNICIPAL CORPORATIONS; APPROPRIATIONS; NONTAX FUNDS FOR
AIRPORT FACILITIES**

A municipal corporation may appropriate nontax public funds for the purpose of maintenance and operation of an airport facility.

3 March 1961

MUNICIPAL CORPORATIONS; ASSESSMENT; CONSTRUCTION OF CURB
AND GUTTER

Where statutory petition is filed pursuant to Chapter 224, Private Laws of 1927, in regard to the construction of a curb and/or gutter, an assessment may be levied pursuant to Section 4(d) of the above mentioned Private Law since the improvement is one specifically mentioned therein, to wit: "the construction or reconstruction of curbs, gutters and drains".

11 August 1961

MUNICIPAL CORPORATIONS; ASSESSMENT OF STREET AND SIDEWALK
IMPROVEMENTS; EXTRATERRITORIAL ZONING

Under G. S. 160-182.2, a municipality may zone property on the opposite side of a river if within the one-mile limitation.

Under G. S. 160-81, an abutting property owner may be assessed for sidewalk and street improvements if a petition is filed as required. Unless there is a petition, statute or charter provision, an abutting property owner may not be assessed for sidewalk and street improvements.

18 October 1961

MUNICIPAL CORPORATIONS; AUDITORIUM; PUBLIC PURPOSE

The general law authorizes municipalities to acquire, establish and operate auditoriums and expenditure of money therefor has been held to be for a public purpose.

15 September 1960

MUNICIPAL CORPORATIONS; AUTHORITY TO ENTER LEASE-PURCHASE
CONTRACT FOR EQUIPMENT; PROCEDURE FOR LETTING PUBLIC
CONTRACTS

Under the provisions of G. S. 160-200(1), all cities are empowered to acquire property under a lease-purchase or rental-purchase contract. However, such contracts must be let in compliance with G. S. 143-129. Any agreement which ultimately would transfer title of the equipment to the city would constitute a purchase, and if there was no special emergency involving the health and safety of the people or their property it would be necessary to comply with G. S. 143-129 which requires public bidding and sets forth the procedure for the letting of public contracts.

9 August 1960

MUNICIPAL CORPORATIONS; AUTHORITY TO EXPEND FUNDS FOR (1)
URBAN REDEVELOPMENT, (2) EXTENDING FIRE PROTECTION OUTSIDE
CITY LIMITS, AND (3) EXTENDING UTILITY FACILITIES OUTSIDE
CITY LIMITS WITHOUT VOTE OF THE PEOPLE

(1) Nontax funds may be appropriated by a municipality for urban redevelopment without a vote of the people.

(2) A municipality may expend tax funds for fire protection within two miles from the corporate limits.

(3) A municipality may expend tax funds for an extension of its water lines without the city when such extension is necessary to the effective operation of the improvement within the city without a vote of the people; however, no tax funds may be spent for the extension of water lines outside of the city when such extension is for proprietary purposes or for a profit without a vote of the people.

20 December 1960

MUNICIPAL CORPORATIONS; AUTHORITY TO REGULATE TRAFFIC ON STREETS WHICH ARE A PART OF THE STATE HIGHWAY SYSTEM

Under G. S. 160-200 (11) (31) and G. S. 136-18 (5) municipalities have the authority to regulate traffic on city streets which form a part of the State Highway System. The State Highway Commission has specific authority to regulate parking on such streets.

3 February 1961

MUNICIPAL CORPORATIONS; BONDS; ARMORY CONSTRUCTION

Counties and municipalities are specifically authorized to borrow money and issue and sell bonds and to raise, by taxation and otherwise, sufficient funds to defray the cost of armory construction. This may be done without a vote of the people provided the constitutional debt limitation is not exceeded by such action.

19 September 1960

MUNICIPAL CORPORATIONS; BONDS AND NOTES; INVESTMENTS IN BONDS AND NOTES OF CERTAIN GOVERNMENT AGENCIES

Under G. S. 159-25, counties and municipalities may not buy for their sinking funds bonds or notes of government agencies such as:

1. Federal Intermediate Credit Bank Debentures;
 2. Federal Home Loan Bank Notes and Bonds;
 3. Federal National Mortgage Association Notes and Debentures;
 4. Federal Land Bank Bonds;
 5. Banks for Cooperatives Debentures;
 6. International Bank for Reconstruction and Development Bonds;
- as they are not obligations of or guaranteed by the United States Government.

15 December 1961

MUNICIPAL CORPORATIONS; COMMERCE AND BUSINESS; FRANCHISE TAXES FOR MAGAZINE SALESMEN

Franchise taxes on magazine salesmen taking order for out-of-State publications are restrictions upon Interstate Commerce; hence contrary to Article 1, Section VII of the Constitution of the United States.

17 March 1961

MUNICIPAL CORPORATIONS; CONDEMNATION OF LAND FOR SEWAGE
DISPOSAL SYSTEM OUTSIDE OF MUNICIPALITY

Power set forth in G. S. 160-424.2 may be exercised by city independently from the issuance of the bonds authorized in G. S. 160-424.1.

3 January 1961

MUNICIPAL CORPORATIONS; CONDEMNATION OF LANDS FOR STREETS
OUTSIDE CITY LIMITS

The right of a municipal corporation to condemn lands for streets must be specifically granted by the Legislature either in the charter of the municipal corporation or by the General Statutes. G. S. 160-205 grants authority to cities to condemn lands for rights-of-way outside the city limits. Procedure is as prescribed in the charter granting the authority, or as set forth in Chapter 40 of the General Statutes.

19 April 1962

MUNICIPAL CORPORATIONS; CONDEMNATION OUTSIDE CORPORATE
LIMITS AND IN ANOTHER STATE

A municipality may condemn land outside its corporate limits for the purpose of providing a water system for its inhabitants. However, a municipality in North Carolina cannot condemn land located in another State for laws have no extraterritorial effect beyond the territorial limits of the State that enacts them.

22 June 1962

MUNICIPAL CORPORATIONS; CONTRACTS; AUTHORITY OF MUNICIPALITY
TO AWARD SECOND LOW BID BASED UPON POSSIBLE CONTINGENCY
WHICH WOULD REDUCE COST TO MUNICIPALITY IF THE
CONTINGENCY ARISES

If the possibility of a contingency arising would make the total cost of a contract exceed the amount of funds available to a municipality, the statute (G. S. 143-129) does not permit renegotiation taking into consideration that contingency if the specifications would thereby be changed; if the specifications are to be changed, readvertisement is to be made based upon the new specifications. Contracts are to be awarded to the lowest bidder under G. S. 143-129 taking into consideration quality, performance and time specified.

15 July 1960

MUNICIPAL CORPORATIONS; CONTRACTS; AWARDED TO EMPLOYEE OF
MUNICIPALITY UPON SUBMISSION OF LOWEST BID ON PUBLIC CONTRACT

A municipality may award a contract to one of its employees as the lowest responsible bidder, taking into consideration quality, performance, and the time specified in the proposals for the performance of the contract.

13 February 1961

MUNICIPAL CORPORATIONS; CRIMINAL LAW; JURISDICTION OF
POLICE TO ARREST OUTSIDE CORPORATE LIMITS

The General Assembly may provide in the charter of a municipal corporation that the police officers thereof have the same power vested in the sheriff or his deputies to arrest for offenses committed within a one mile zone outside the municipal corporate limits, which provisions are valid.

13 February 1961

MUNICIPAL CORPORATIONS; CRIMINAL LAW; JURISDICTION OF POLICE
OFFICERS; CIVIL LIABILITY OF MUNICIPAL CORPORATIONS
FOR ACTS OF POLICE OFFICERS

Absent any statutory local modification of the general law, a municipal police officer is without authority to arrest or serve criminal process outside the limits of the municipal corporation. A municipality is ordinarily not liable for the negligence of police officers in the performance of their duties, although the police officer himself may be personally liable if he exceeds his authority, real or apparent, express or implied.

26 June 1961

MUNICIPAL CORPORATIONS; DONATIONS OR APPROPRIATIONS TO
YMCA TO CARRY OUT ITS YOUTH PROGRAM

A municipality may not make an unrestricted gift to a YMCA to carry out its youth program. A municipality may appropriate available surplus funds not derived from taxes or a pledge of its credit to a YMCA to provide playgrounds or recreational centers. DENNIS v. RALEIGH 253 N. C. 400.

24 April 1961

MUNICIPAL CORPORATIONS; DONATIONS FROM TAX FUNDS

A municipality may not make donations from tax funds to various charitable organizations without legislative sanction and a vote of the people authorizing a tax to be levied for such purposes.

28 July 1961

MUNICIPAL CORPORATIONS; DORMANT MUNICIPAL GOVERNMENT

Once a city or town is incorporated, such corporation may be dissolved only by an act of the General Assembly.

22 September 1961

MUNICIPAL CORPORATIONS; DRAINAGE DISTRICT; ISSUANCE OF ADDITIONAL BONDS FOR DRAINAGE SYSTEM ACCORDING TO SOIL CONSERVATION'S RECOMMENDED IMPROVEMENTS

Where a drainage district does not have sufficient funds to complete the construction of the drainage system and the additional amount needed is in excess of 25% of the total amount of the bonds initially issued, the procedure for the drainage district to follow is provided for in G. S. 156-93.2.

16 August 1960

MUNICIPAL CORPORATIONS; DRAINAGE DISTRICT; LOWEST BID ABOVE ESTIMATED COST; AUTHORITY OF BOARD WHERE ESTIMATE ERRONEOUS TO ACCEPT LOWEST BID

Under G. S. 156-84, if the report of the engineer and viewers is altered or modified by the board of drainage commissioners because the original estimate was erroneous, such altered or modified report must be confirmed by the court before a bid which is higher than the original estimated cost may be entertained.

13 February 1961

MUNICIPAL CORPORATIONS; ELECTIONS; NOMINATIONS OF CANDIDATES

The General Assembly has authority to abolish municipal primary elections and provide for nonpartisan elections.

4 May 1961

MUNICIPAL CORPORATIONS; ELECTIONS; RECOUNTING BALLOTS UNDER MUNICIPAL CHARTER PROVISIONS

Where municipal charter provision is to the effect that the board of aldermen shall have the same powers and duties as conferred upon county boards of elections by Chapter 163 of the General Statutes of North Carolina, then, in that event, they shall be the sole judges of a recount of ballots when contested by one of the candidates.

17 May 1962

MUNICIPAL CORPORATIONS; ELECTIONS; REGISTRATION BOOKS; LOOSE-LEAF REGISTRATION SYSTEM

Where a county has adopted the modern loose-leaf registration system as provided by G. S. 163-43 and 163-31, and a municipality within such county has a special act, Chapter 716, Session Laws of 1951, which provides for registration and conduct of elections which are inconsistent with provisions of the general law, it is deemed advisable for the municipality to conduct its registration and elections in accordance with the special act, notwithstanding the provisions of G. S. 163-31.3.

16 May 1961

MUNICIPAL CORPORATIONS; EMINENT DOMAIN PROCEEDINGS TO
ACQUIRE LAND FOR FIRE STATIONS

The list of purposes for which eminent domain proceedings may be had by municipalities does not include acquisition of land for fire stations specifically. Since this power is one granted by the Legislature, the purpose of such proceeding should be stated by the Legislature to include this specific function.

20 July 1960

MUNICIPAL CORPORATIONS; EMINENT DOMAIN; STREETS;
RIGHTS OF WAY

The provisions of G. S. 136-66.3(c) for municipalities to acquire rights of way on State Highway Commission System streets within municipalities with the same authority granted the State Highway Commission in Chapter 136 of the General Statutes is a substantive authorization and does not authorize the municipality to follow the procedural remedies prescribed by Article 9 of Chapter 136.

9 February 1961

MUNICIPAL CORPORATIONS; EXPENDITURE OF MUNICIPAL FUNDS FOR
PURCHASE OF A CLINIC TO RENT TO TWO PHYSICIANS

A town may not purchase a Medical Clinic and lease it to private physicians.

3 August 1961

MUNICIPAL CORPORATIONS; EXTENSION OF CORPORATE LIMITS

A municipality having a population of 5,000 or less may extend its corporate limits without a vote of the people.

21 June 1962

MUNICIPAL CORPORATIONS; FINANCE; BUDGET; TIME FOR
MAKING TAX LEVY

The failure to adopt a municipal budget within the time prescribed by G. S. 160-410.3 will not have the effect of invalidating a tax levy.

24 March 1961

MUNICIPAL CORPORATIONS; FIRE PROTECTION; CONTRACTING FOR
SAME WITH A VOLUNTARY FIRE DEPARTMENT

The governing board of a town has implied power to contract with a voluntary fire department located within its corporate limits for the furnishing of fire protection to citizens of the town.

31 May 1962

MUNICIPAL CORPORATIONS; GOVERNING BOARD; OFFICERS; QUORUM

When a governing board of a town consists of six members, at least four must be present at a meeting to constitute a quorum unless a special law specifically provides otherwise.

20 November 1961

MUNICIPAL CORPORATIONS; GOVERNING BOARD; PLACE OF MEETING;
NO AUTHORITY TO MEET OUTSIDE CORPORATE LIMITS

In the absence of specific statutory authority, the governing body of a municipality does not have authority to hold an official meeting outside the municipal limits.

10 July 1961

MUNICIPAL CORPORATIONS; GOVERNING BOARD; VACANCIES

Under the general law a vacancy on a town governing board is filled by appointment for the unexpired term by the other members of the board.

31 August 1961

MUNICIPAL CORPORATIONS; GRATUITIES; SALARY OF CITY MANAGER

A municipal board may not pay a gratuity to an officer or employee for any period after the termination of his employment with the municipality.

25 May 1961

MUNICIPAL CORPORATIONS; HOUSING AUTHORITIES; EMPLOYEES;
MILEAGE EXPENSES

G. S. 147-8 and G. S. 147-9, which restrict travel mileage of employees of any subdivision of the State to seven cents per mile, are applicable to housing authorities created under Chapter 157 of the General Statutes.

20 October 1961

MUNICIPAL CORPORATIONS; INSURANCE; LIABILITY INSURANCE
COVERING ALL OF ITS FUNCTIONS; POWER TO WAIVE
GOVERNMENTAL IMMUNITY

A municipal corporation does not have power to obtain liability insurance covering all of its functions.

A municipality may not, by effecting liability insurance not involving the operation of motor vehicles, waive its immunity to the extent of the insurance purchased.

27 July 1961

MUNICIPAL CORPORATIONS; INSURANCE; LIABILITY INSURANCE;
WAIVER OF GOVERNMENTAL IMMUNITY

The City Council of a town, having waived the town's governmental immunity from tort liability to the extent permitted by G. S. 160-191.1 *et seq.*, by the purchase of liability insurance, would regain and thereafter maintain all of its governmental immunity by adopting a resolution not to waive its governmental immunity, reserving to the town the right to plead governmental immunity as a defense in any action against the town.

16 December 1960

MUNICIPAL CORPORATIONS; JAILS; RESTRICTIONS AS TO JAIL USE

The governing body of a municipality may adopt and enforce such reasonable regulations as it deems wise in maintaining and operating a municipal jail. This opinion is based on the fact that G. S. 160-2, Subsec. 10, authorizing municipalities to maintain and operate municipal jails is not mandatory but discretionary, and a town is not required to operate a jail if it does not choose to do so.

27 March 1962

MUNICIPAL CORPORATIONS; LOCAL IMPROVEMENTS; PETITIONS;
SUFFICIENCY

For purposes of making local improvements and assessing abutting property owners for the cost of same under Chapter 160 of the General Statutes, two separate petitions for the improvement of two intersecting streets may not be combined for the purpose of determining whether the signers of both petitions represent the owners of the requisite 50% of the front footage on both streets.

6 October 1961

MUNICIPAL CORPORATIONS; LOCAL IMPROVEMENTS;
SPECIAL ASSESSMENTS

There is no general authority by which a municipality may make local improvements and levy assessments therefor without going through

the procedure provided by G. S. 160-78 *et seq.*, although involuntary assessments made by a municipality without the requisite petition and proceedings as set out in the statute might be validated by the General Assembly.

21 September 1961

MUNICIPAL CORPORATIONS; ORDINANCES; AUTHORITY OF CITY TO
ENACT FOUR-WAY STOP ORDINANCE

Municipalities under G. S. 160-200, Subsection 31 may require all motor vehicles to stop from all streets entering an intersection without regard to provisions of G. S. 20-158.

14 August 1961

MUNICIPAL CORPORATIONS; ORDINANCES; BILLBOARDS; VALIDITY
OF ORDINANCE PROHIBITING

Ordinances prohibiting erection of billboards, when not related directly to exercise of police power to protect health, safety, morals or welfare, are invalid and unenforceable.

26 September 1960

MUNICIPAL CORPORATIONS; ORDINANCES; CURFEW;
NO AUTHORITY TO ADOPT

A municipality in this State does not have authority under the general law to adopt curfew ordinances regulating the hours when young people must be off the streets.

19 August 1960

MUNICIPAL CORPORATIONS; ORDINANCES; NORTH CAROLINA STATE
BUILDING CODE OF 1958; INCORPORATING OTHER MATERIALS BY
REFERENCE; REMOVAL OF CONDEMNED BUILDINGS AND
CHARGES AGAINST THE PROPERTY

A municipal corporation may adopt the North Carolina State Building Code as its local building code by enacting a valid ordinance incorporating the State Code by reference.

Municipal corporations have the power to enact ordinances requiring condemned buildings to be removed at the expense of the owner or owners when the same are dangerous to life, health or other property (G. S. 160-200(28)), but a local ordinance purporting to create an automatic lien in favor of the city against the property, where the owner refuses to remove a condemned building and the city is required to incur expenses in doing so, is of doubtful validity in the absence of a statute expressly authorizing such an ordinance.

17 November 1960

MUNICIPAL CORPORATIONS; ORDINANCES; PRIVILEGE LICENSE
TAXES; CONTRACTORS

Under a city ordinance which levies a tax upon contractors doing business in the city, a person who sells aluminum siding and aluminum window frames "as a job" to an individual and later returns and installs the windows and siding should be classified as a contractor and would be subject to the contractor's license levied by such city ordinance.

18 October 1960

MUNICIPAL CORPORATIONS; ORDINANCES; PRIVILEGE TAXES;
HOUSE TRAILERS

A municipal ordinance imposing a \$25.00 annual tax on the privilege of owning, possessing or occupying any house trailer located in, or to be located in, the municipality is invalid.

28 September 1960

MUNICIPAL CORPORATIONS; ORDINANCES; PRIVILEGE LICENSE
TAXES; PEDDLERS; DAIRY PRODUCTS

A municipality may not levy a privilege license tax upon peddlers of dairy products as such. However, under the authority of *STATE v. BRIDGERS*, 211 N. C. 235, 189 S. E. 869 (1937) and *HILTON v. HARRIS*, 207 N. C. 465, 177 S. E. 411 (1934), a municipality might, by virtue of its general taxing power under G. S. 160-56, frame a taxing ordinance which would incidentally cover one in the business of selling dairy products even though sales are made as by peddling.

2 November 1960

MUNICIPAL CORPORATIONS; ORDINANCES; PRIVILEGE LICENSE
TAXES; PEDDLERS; EXCLUDING PEDDLERS BY VEHICLE

A municipal ordinance prohibiting a peddler from securing a municipal privilege license and peddling from a vehicle would be invalid as being arbitrary and discriminatory unless the ordinance bears some reasonable relation to the protection of the public health or safety.

6 June 1962

MUNICIPAL CORPORATIONS; ORDINANCES; SPEED RESTRICTIONS;
AUTHORITY OF MUNICIPALITIES TO REGULATE SPEED ON
STATE HIGHWAYS

The State Highway Commission by ordinance cannot raise the statutory speed limit in a residential or business district as defined by statute either within or outside of a municipality. However, a municipality may set speeds higher than those set by statute on both city and State High-

way system streets within the corporate limits of the municipality. The Highway Commission on system streets may lower the speed limit within a municipality below that set by statute, and the municipality may lower the speed limit on system streets within the municipality; however, this may only be done on the basis of an engineering and traffic investigation and only at intersections or on a street or highway in the vicinity of a public, private or parochial school or recreational area.

7 July 1961

MUNICIPAL CORPORATIONS; ORDINANCES; SPEED RESTRICTIONS;
AUTHORITY OF MUNICIPALITIES TO REGULATE SPEED
ON STATE HIGHWAYS

A municipality under G. S. 20-141(f) has authority to reduce the statutory speed limit on State-maintained highways within their jurisdiction at intersections within the vicinity of public, private or parochial schools or recreational areas on the basis of an engineering and traffic investigation.

13 July 1961

MUNICIPAL CORPORATIONS; ORDINANCES; SPEED RESTRICTIONS;
JURISDICTION OF MAYOR'S COURT OVER VIOLATIONS
ON NON-HIGHWAY SYSTEM STREETS

A Mayor's Court does not have jurisdiction to try speeding offenses under G. S. 20-141 on town streets which are not a portion of the State Highway System except violations of a town ordinance enacted pursuant to G. S. 20-141(f).

28 February 1961

MUNICIPAL CORPORATIONS; ORDINANCES; SPEED RESTRICTIONS; POWER
OF LOCAL AUTHORITIES TO FIX SPEED LIMITATIONS ON STREETS NOT
A PART OF THE STATE HIGHWAY SYSTEM

Local authorities may under the provisions of G. S. 20-141(f) and in their discretion fix by ordinance speed limits deemed safe and proper on streets within their jurisdictions which are not maintained by the State Highway Commission without regard to whether such streets have fronting on them residential districts within the meaning of G. S. 20-38(w)1. Speed limits so fixed may not be less than 25 miles per hour and are not effective until signs have been erected giving notice of the speed limits on such streets.

31 January 1961

MUNICIPAL CORPORATIONS; ORDINANCES; SPEED RESTRICTIONS;
TRAINS; PRESUMPTION OF REASONABLENESS OF ORDINANCE

Municipal corporations have authority to adopt ordinances restricting the speed of trains by virtue of their general police power. Municipal ordinances limiting the speed of trains operating within such municipality

or requiring the trains to stop before entering certain street intersections are presumably reasonable and valid and not in conflict with the State or Federal constitutions. This presumption may, however, be rebutted by an affirmative showing that the ordinance is unreasonable in its application to the facts of the case. Whether a particular speed ordinance is unreasonable and void is a question for the court to be determined in the light of all circumstances surrounding the place affected by the ordinance.

23 October 1961

MUNICIPAL CORPORATIONS; ORDINANCES; SUBDIVISION
CONTROL CORNERS

A municipal ordinance conforming to G. S. 39-32.1 is valid, even though at variance with Manual of Practice authorized under G. S. 89-16.

14 April 1961

MUNICIPAL CORPORATIONS; ORDINANCE; ZONING BOARD OF ADJUST-
MENT INACTIVE; FUNCTIONS OF BOARD OF ALDERMEN

The Board of Aldermen cannot take over the functions or perform the duties of a board of adjustment, it being a legislative body rather than a quasi-judicial body.

26 April 1961

MUNICIPAL CORPORATIONS; ORDINANCES; ZONING; DOING BUSINESS
IN RESIDENTIAL ZONE

A private ambulance service is not doing business, or has not established a place of business, in a residential-zone area when one of the drivers takes the ambulance to his home at night and has telephone connections to the place of business for the purpose of answering night calls. If, however, a person operates an ambulance service from his home and has additional facilities, such as outbuildings, signs, garage, extra lights, etc., he can very well be operating a place of business in a residential zone.

19 June 1962

MUNICIPAL CORPORATIONS; ORDINANCES; ZONING
SPOT ZONING

As a general rule a zoning ordinance of a municipality is valid if it emanates from powers granted by the Legislature to the municipality, if it has a reasonable tendency to promote the public safety, health, morals, comfort, welfare and prosperity of the community, and if its provisions are not arbitrary, unreasonable or confiscatory.

Where a municipality rezones a portion of a city block from residential to manufacturing, and the question of "spot zoning" arises, the basic rule to determine the validity of the amending ordinance is the same rule used to determine the validity of the original ordinance: The governing board

must act in good faith. It cannot act arbitrarily or capriciously. If the conditions existing at the time of the proposed change are such as would have originally justified the proposed action, the governing board has the power to act. *WALKER v. ELKIN*, 254 N. C. 85; *HELMS v. CHARLOTTE*, 255 N. C. 647.

25 July 1961

MUNICIPAL CORPORATIONS; PARKING; REGULATION OF ON-STREET
PARKING; DIMINUTION OF PENALTY WHEN PAID PROMPTLY

A proposed city ordinance imposing a penalty of 50¢ for overtime parking when the parking ticket is paid within 24 hours or a penalty of \$1.00 if the ticket is not paid within such time is not unconstitutional, unreasonable or discriminatory on its face. Any asserted invalidity of such an ordinance for unreasonableness or discrimination should be asserted as a matter of defense by the person aggrieved thereby.

2 March 1962

MUNICIPAL CORPORATIONS; POLICE OFFICERS; CAMPAIGNING
FOR ELECTIVE OFFICE

There is nothing in the law that would prohibit a person from continuing to serve as a police officer while campaigning for public office. Of course, whether the city governing body, as a matter of policy, wants to permit a person to serve as a policeman while campaigning for office is something for the governing body to decide.

8 July 1960

MUNICIPAL CORPORATIONS; POLICE OFFICERS; CIVIL LIABILITY FOR
ACTS OF POLICE OFFICERS IN PERFORMING THEIR DUTIES;
CONTROL OF CITY STREETS

A law enforcement officer, in the performance of his official duties, is acting in a governmental capacity and, under ordinary circumstances, a municipality is not liable in tort for his negligent acts, although the officer himself may be personally liable if he exceeds his authority, real or apparent, express or implied. *PARKS v. PRINCETON*, 217 N. C. 361.

5 July 1960

MUNICIPAL CORPORATIONS; POLICE OFFICERS; JURISDICTION TO ARREST
OUTSIDE CORPORATE LIMITS BUT ON MUNICIPALLY-OWNED PROPERTY

Unless property owned by a municipality is taken into the city limits or the jurisdiction of police officers of a municipality has been extended to include such property, a police officer of a municipality is without authority to make an arrest or execute criminal process outside of the corporate limits.

13 February 1961

MUNICIPAL CORPORATIONS; POLICE OFFICERS; JURISDICTION TO ARREST
OUTSIDE CORPORATE LIMITS

The General Assembly may provide in the charter of a municipal corporation that the police officers thereof have the same power vested in the sheriff or his deputies to arrest for offenses committed within a one-mile zone outside the municipal corporate limits, which provisions are valid.

13 February 1961

MUNICIPAL CORPORATIONS; POLICE OFFICERS; JURISDICTION;
CIVIL LIABILITY OF MUNICIPAL CORPORATIONS
FOR ACTS OF POLICE OFFICERS

Absent any statutory local modification of the general law, a municipal police officer is without authority to arrest or serve criminal process outside the limits of the municipal corporation. A municipality is ordinarily not liable for the negligence of police officers in the performance of their duties, although the police officer himself may be personally liable if he exceeds his authority, real or apparent, express or implied.

16 October 1961

MUNICIPAL CORPORATIONS; POLICE OFFICERS; JURISDICTION; POWER OF
ARREST BEYOND CORPORATE LIMITS

Policemen of municipal corporations have no jurisdiction to apprehend offenders beyond the corporate limits in the absence of special legislation conferring such jurisdiction. Special legislation conferring additional territorial jurisdiction upon municipal law enforcement officers is not affected by the fact that such additional territorial jurisdiction might extend into more than one county or across a county line.

25 September 1961

MUNICIPAL CORPORATIONS; POLICE OFFICERS; PRIVATE EMPLOYMENT
DURING OFF-DUTY HOURS

Unless a city's charter provides otherwise, there is no legal reason why a city governing body could not impose any restrictions it might choose with respect to private employment of a police officer during off-duty hours.

31 October 1960

MUNICIPAL CORPORATIONS; POWELL BILL; EXPENDITURE OF MUNICIPAL ALLOCATIONS FOR PRISON LABOR EMPLOYED TO WORK ON STREETS

A municipality would have the right to use the funds allocated to it to obtain labor forces, including inmate labor forces, insofar as the labor forces are used for the purpose for which funds may be used as provided in G. S. 136-41.3, and further that the labor force is to be used exclusively on municipal system streets.

8 July 1960

MUNICIPAL CORPORATIONS; POWELL BILL; EXPENDITURE OF MUNICIPAL ALLOCATION FOR THOROUGHFARE PLANNING STUDIES

Powell Bill funds of a municipality cannot be used to defray the cost to the municipality of street thoroughfare planning studies authorized by Chapter 687 of the 1959 Session Laws.

25 April 1961

MUNICIPAL CORPORATIONS; POWELL BILL; USE OF EQUIPMENT PURCHASED WITH POWELL BILL FUNDS ON STATE HIGHWAY SYSTEM STREETS WITHIN MUNICIPALITY

Municipality has the right to use equipment purchased with Powell Bill Funds on State Highway System streets within the municipality, but a rental charge must be made for the use of this equipment on State Highway System streets.

15 September 1961

MUNICIPAL CORPORATIONS; PUBLIC OFFICERS; RESIDENCE OF COMMISSIONERS

Before a person may become a public officer in a municipality, such person must be a qualified voter, G. S. 160-75.

A non-resident of a municipality cannot be a qualified voter and if he is elected to a public office in the municipality, he may be ousted from office as a usurper in a *quo warranto* proceeding. *FOARD v. HALL*, 111 N. C. 360.

5 October 1961

MUNICIPAL CORPORATIONS; REAL PROPERTY; EXECUTION OF LEASE OF SURPLUS PROPERTY

When a town governing body has authorized the mayor to execute a certain contract, and the mayor's term expires before such contract is executed, the new mayor and not the ex-mayor would be the person with authority to execute the contract.

16 April 1962

MUNICIPAL CORPORATIONS; REAL PROPERTY; SALE OR TRANSFER OR EXCHANGE; EXCHANGE NOT AUTHORIZED BY STATUTE

Under the general law, an incorporated city or town does not have authority to exchange real property with another owner.

18 September 1961

MUNICIPAL CORPORATIONS; RECREATIONAL PROGRAM FOR TOWN

A municipality does not have authority to give away funds for recreation, bands, swimming pool, etc., **GREEN v. KITCHEN**, 229 N. C. 450.

3 March 1961

MUNICIPAL CORPORATIONS; SPECIAL ASSESSMENTS; CONSTRUCTION OF CURB AND GUTTER

Where statutory petition is filed pursuant to Chapter 224, Private Laws of 1927, in regard to the construction of a curb and/or gutter, an assessment may be levied pursuant to Section 4(d) of the above mentioned Private Law since the improvement is one specifically mentioned therein, to wit: "the construction or reconstruction of curbs, gutters and drains".

23 September 1960

MUNICIPAL CORPORATIONS; SPECIAL ASSESSMENTS; LOCAL IMPROVEMENTS; ONE SIDE OF A MUNICIPAL STREET

Under G. S. 160-82, a petition for improvements signed by the abutting property owners on only one side of a street for improvements to that side of the street is valid.

27 March 1962

MUNICIPAL CORPORATIONS; SPECIAL ASSESSMENTS; LOCAL IMPROVEMENTS; PETITIONS; SUFFICIENCY

For purposes of making local improvements and assessing abutting property owners for the cost of same under Chapter 160 of the General Statutes, two separate petitions for the improvement of two intersecting streets may not be combined for the purpose of determining whether the signers of both petitions represent the owners of the requisite 50% of the front footage on both streets.

6 October 1961

MUNICIPAL CORPORATIONS; SPECIAL ASSESSMENTS; LOCAL
IMPROVEMENTS; STATUTORY PROCEDURE

There is no general authority by which a municipality may make local improvements and levy assessments therefor without going through the procedure provided by G. S. 160-78 *et seq.*, although involuntary assessments made by a municipality without the requisite petition and proceedings as set out in the statute might be validated by the General Assembly.

14 July 1961

MUNICIPAL CORPORATIONS; SPECIAL ASSESSMENTS;
PORTIONS OF SIDEWALKS

A municipality may receive and act upon a petition to pave sidewalks in less than entire blocks and make assessments therefor.

15 August 1961

MUNICIPAL CORPORATIONS; SPECIAL ASSESSMENTS; SIDEWALK
COVERING AND LIGHTING

Sidewalk coverings with incidental lighting in the business district of a town may constitute a "local improvement" within the purview of Article 9 of Chapter 160 of the General Statutes and might be erected upon petition of the requisite number of property owners and the costs assessed against the abutting owners.

29 May 1961

MUNICIPAL CORPORATIONS; SPECIAL ASSESSMENTS; SIDEWALK
MAINTENANCE AND REPAIRS

A municipality may not assess abutting property for the expense of sidewalk maintenance and repairs except as a result of a petition as provided in G. S. 160-82, unless the municipality has been given such authority in its charter or some local act or by special authorization from the General Assembly.

11 August 1961

MUNICIPAL CORPORATIONS; SPECIAL ASSESSMENTS; STREET AND
SIDEWALK IMPROVEMENTS; EXTRATERRITORIAL ZONING

Under G. S. 160-182.2 a municipality may zone property on the opposite side of a river if within the one-mile limitation.

Under G. S. 160-81, an abutting property owner may be assessed for sidewalk and street improvements if a petition is filed as required. Unless there is a petition, statute or charter provision, an abutting property owner may not be assessed for sidewalk and street improvements.

27 October 1960

MUNICIPAL CORPORATIONS; SPECIAL ASSESSMENTS; STREET IMPROVEMENTS; LIABILITY OF GOVERNMENTAL AGENCIES

Publicly-owned property is liable for special assessments for local improvements if there has been compliance with proper assessment procedure.

12 May 1961

MUNICIPAL CORPORATIONS; STREETS; ABANDONMENT OF STREETS WITHIN NEWLY ANNEXED AREAS BY HIGHWAY COMMISSION

Under the provisions of G. S. 136-66.2 the State Highway Commission may abandon any system streets which were not within a municipality or which were not on the system on July 1, 1959. However, all streets within municipalities which were on the State Highway system and were within the municipality on July 1, 1959, may not be abandoned by the Highway Commission except by agreement between the Highway Commission and the municipality.

20 December 1960

MUNICIPAL CORPORATIONS; STREETS; AUTHORITY TO REGULATE TRAFFIC ON STREETS WHICH ARE A PART OF THE STATE HIGHWAY SYSTEM

Under G. S. 160-200 (11) (31) and G. S. 136-18 (5) municipalities have the authority to regulate traffic on city streets which form a part of the State Highway System. The State Highway Commission has specific authority to regulate parking on such streets.

3 January 1961

MUNICIPAL CORPORATIONS; STREETS; CONDEMNATION OF LANDS FOR STREETS OUTSIDE CITY LIMITS

The right of a municipal corporation to condemn lands for streets must be specifically granted by the Legislature either in the charter of the municipal corporation or by the General Statutes. G. S. 160-205 grants authority to cities to condemn lands for rights-of-way outside the city limits. Procedure is as prescribed in the charter granting the authority, or as set forth in Chapter 40 of the General Statutes.

20 July 1960

MUNICIPAL CORPORATIONS; STREETS; EMINENT DOMAIN;
RIGHTS OF WAY

The provisions of G. S. 136-66.3(c) for municipalities to acquire rights of way on State Highway Commission System streets within municipalities with the same authority granted the State Highway Commission in Chapter 136 of the General Statutes is a substantive authorization and does not authorize the municipality to follow the procedural remedies prescribed by Article 9 of Chapter 136.

23 September 1960

MUNICIPAL CORPORATIONS; STREETS; IMPROVEMENTS AND ASSESS-
MENTS TO ONLY ONE SIDE OF A MUNICIPAL STREET

Under G. S. 160-82, a petition for improvements signed by the abutting property owners on only one side of a street for improvements to that side of the street is valid.

31 October 1960

MUNICIPAL CORPORATIONS; STREETS; POWELL BILL; EXPENDITURE OF
MUNICIPAL ALLOCATIONS FOR PRISON LABOR EMPLOYED TO
WORK ON STREETS

A municipality would have the right to use the funds allocated to it to obtain labor forces, including inmate labor forces, insofar as the labor forces are used for the purpose for which funds may be used as provided in G. S. 136-41.3, and further that the labor force is to be used exclusively on municipal system streets.

8 July 1960

MUNICIPAL CORPORATIONS; STREETS; POWELL BILL; EXPENDITURE OF
MUNICIPAL ALLOCATION FOR THOROUGHFARE PLANNING STUDIES

Powell Bill funds of a municipality cannot be used to defray the cost to the municipality of street thoroughfare planning studies authorized by Chapter 687 of the 1959 Session Laws.

25 April 1961

MUNICIPAL CORPORATIONS; STREETS; POWELL BILL; USE OF EQUIP-
MENT PURCHASED WITH POWELL BILL FUNDS ON STATE HIGHWAY
SYSTEM STREETS WITHIN MUNICIPALITY

Municipality has the right to use equipment purchased with Powell Bill funds on State Highway System streets within the municipality, but a rental charge must be made for the use of this equipment on State Highway System streets.

3 March 1961

MUNICIPAL CORPORATIONS; STREETS; SPECIAL ASSESSMENTS;
CONSTRUCTION OF CURB AND GUTTER

Where statutory petition is filed pursuant to Chapter 224, Private Laws of 1927, in regard to the construction of a curb and/or gutter, an assessment may be levied pursuant to Section 4(d) of the above mentioned Private Law since the improvement is one specifically mentioned therein, to wit: "the construction or reconstruction of curbs, gutters and drains".

23 September 1960

MUNICIPAL CORPORATIONS; STREETS; SPECIAL ASSESSMENTS; LOCAL
IMPROVEMENTS; ONE SIDE OF A MUNICIPAL STREET

Under G. S. 160-82, a petition for improvements signed by the abutting property owners on only one side of a street for improvements to that side of the street is valid.

27 March 1962

MUNICIPAL CORPORATIONS; STREETS; SPECIAL ASSESSMENTS; LOCAL
IMPROVEMENTS; PETITIONS; SUFFICIENCY

For purposes of making local improvements and assessing abutting property owners for the cost of same under Chapter 160 of the General Statutes, two separate petitions for the improvement of two intersecting streets may not be combined for the purpose of determining whether the signers of both petitions represent the owners of the requisite 50% of the front footage on both streets.

15 August 1961

MUNICIPAL CORPORATIONS; STREETS; SPECIAL ASSESSMENTS;
SIDEWALK COVERING AND LIGHTING

Sidewalk coverings with incidental lighting in the business district of a town may constitute a "local improvement" within the purview of Article 9 of Chapter 160 of the General Statutes and might be erected upon petition of the requisite number of property owners and the costs assessed against the abutting owners.

29 May 1961

MUNICIPAL CORPORATIONS; STREETS; SPECIAL ASSESSMENTS;
SIDEWALK MAINTENANCE AND REPAIRS

A municipality may not assess abutting property for the expense of sidewalk maintenance and repairs except as a result of a petition as provided in G. S. 160-82, unless the municipality has been given such authority in its charter or some local act or by special authorization from the General Assembly.

14 July 1961

MUNICIPAL CORPORATIONS; STREETS; SPECIAL ASSESSMENTS;
SIDEWALKS; PORTIONS OF SIDEWALKS

A municipality may receive and act upon a petition to pave sidewalks in less than entire blocks and make assessments therefor.

11 August 1961

MUNICIPAL CORPORATIONS; STREETS; SPECIAL ASSESSMENTS;
STREET AND SIDEWALK IMPROVEMENTS

Under G. S. 160-81, an abutting property owner may be assessed for sidewalk and street improvements if a petition is filed as required. Unless there is a petition, statute or charter provision, an abutting property owner may not be assessed for sidewalk and street improvements.

27 October 1960

MUNICIPAL CORPORATIONS; STREETS; SPECIAL ASSESSMENTS;
STREET IMPROVEMENTS; LIABILITY OF GOVERNMENTAL
AGENCIES

Publicly-owned property is liable for special assessments for local improvements if there has been compliance with proper assessment procedure.

30 June 1961

MUNICIPAL CORPORATIONS; TIMBER CUT AND SOLD FROM WATERSHED;
INTEREST OF COUNTY IN PROCEEDS

The provisions of G. S. 105-296.1 apply only to State-owned or controlled lands and not to lands owned by municipalities. Therefore, a county has no claim to any part of the proceeds of a sale of timber cut from a municipality's watershed.

26 April 1962

MUNICIPAL CORPORATIONS; TRADE UNIONS; AUTHORITY OF MUNICIPAL
CORPORATION TO ENTER INTO CHECK-OFF AGREEMENT

A municipal corporation has no authority under the law to operate a check-off system or make payroll deductions from the salaries of its employees and transmit the same to a labor union of which such employees are members; public employees or governmental employees have no legal right to become or remain members of a trade union.

20 September 1960

**MUNICIPAL CORPORATIONS; TRAFFIC HAZARDS AT INTERSECTIONS OF
CITY STREETS; AUTHORITY TO CUT SHRUBS AND TREES**

Under the authority granted to a municipality in G. S. 160-54, a municipality has the authority to trim, cut and remove shrubs and trees located at intersections on its street right-of-way, which includes sidewalks, which cause traffic hazards at such intersections.

11 May 1961

**MUNICIPAL CORPORATIONS; TRANSPORTATION; SUBSIDY OF
CITY BUS OPERATION**

The providing of public transportation within a city for the purpose of alleviating downtown parking problems, traffic on streets and for the protection of school children, among other things, would be a public purpose and if the method of providing the service had been authorized by the Legislature, the city could undertake to provide such service by subsidy of a private operation.

6 November 1961

**MUNICIPAL CORPORATIONS; UTILITIES; FURNISHING SERVICES
BEYOND CITY LIMITS; PURCHASING EQUIPMENT TO BE USED BY
PRIVATE CITIZENS OR ASSOCIATIONS**

A municipality has no authority to use public money to purchase flood-lighting equipment for private use within or without the city limits. Municipalities have authority to purchase and maintain equipment outside of its corporate limits for the transmission and extension of its electric service. G. S. 160-255.

10 October 1960

**MUNICIPAL CORPORATIONS; UTILITIES; TAXES; ELECTRIC
SERVICE; RATES**

It would not be proper to discontinue electric service for failure to pay town taxes. A municipality is not regulated by the Utilities Commission in establishing rates and rates may be established by the town based on service characteristics of the particular customer.

29 August 1961

**MUNICIPAL CORPORATIONS; WATER AND SEWER; CONSTRUCTION OF
WATER AND SEWER LINES OUTSIDE CITY LIMITS**

A city or town does not have authority to perform private contractual work in installing sewer and water systems outside the city limits for private developing companies.

2 June 1961

MUNICIPAL CORPORATIONS; WATER; EXTENSION OF WATER LINES TO
ANNEXED PROPERTY

A municipal corporation which has annexed property can be required by mandamus to provide services to such annexed property under G. S. 160-453.5(h).

1 March 1962

MUNICIPAL CORPORATIONS; WATER; FLUORIDATION; ELECTION

A "straw" vote financed by private sources and completely disassociated from a primary election may be held in a municipality to determine the wishes of the citizens as to the use of fluoride in drinking water supplied by the city. Public funds may not be used for this purpose.

5 July 1961

MUNICIPAL CORPORATIONS; WATER AND SEWER; NECESSARY RATES

A city operating a sewer or water system may lawfully fix rates producing revenue in excess of that necessary for the payment of annual interest, annual amortization of debt, necessary repairs, maintenance and operation.

9 February 1961

MUNICIPAL CORPORATIONS; WATER AND SEWER; SANITARY DISTRICT;
COMPULSORY CONNECTIONS; PROCEDURE WHEN IMPRACTICAL

When it is impractical for a real property owner in a sanitary district to cause toilet connections to be made with the district sewerage system, such person may be compelled to install a septic tank or some other appropriate installation in accordance with the regulations of the State Board of Health.

25 October 1961

MUNICIPAL CORPORATIONS; ZONING; EFFECT ON RESTRICTIVE
COVENANTS

The action of a municipality in rezoning property within the geographical limits of its authority is independent of any restrictive covenants placed upon the property by individual citizens. Both the zoning regulations and the restrictive covenants would on their face be effective.

11 August 1961

MUNICIPAL CORPORATIONS; ZONING EXTRATERRITORIAL ZONING;
ASSESSMENT OF STREET AND SIDEWALK IMPROVEMENTS

Under G. S. 160-182.2, a municipality may zone property on the opposite side of a river if within the one-mile limitation.

Under G. S. 160-81, an abutting property owner may be assessed for sidewalk and street improvements if a petition is filed as required. Un-

21 March 1962

MUNICIPAL CORPORATIONS; ZONING; NEIGHBORHOOD BUSINESS
DISTRICT

Automobile repairing is not a use "customarily and necessarily incident" to use of land for "automobile sales lots". Specific prohibition of use for automobile repair garages takes precedence over a general grant of authority to use for "customary and necessary purposes" connected with automobile sales, and use for such repair garages is not a necessary or customary function of automobile sales lots.

26 April 1961

MUNICIPAL CORPORATIONS; ZONING ORDINANCES; DOING BUSINESS
IN RESIDENTIAL ZONE

A private ambulance service is not doing business, or has not established a place of business, in a residential-zone area when one of the drivers takes the ambulance to his home at night and has telephone connections to the place of business for the purpose of answering night calls. If, however, a person operates an ambulance service from his home and has additional facilities, such as outbuildings, signs, garage, extra lights, etc., he can very well be operating a place of business in a residential zone.

14 April 1961

MUNICIPAL CORPORATIONS; ZONING ORDINANCE; FUNCTIONS
OF BOARD OF ALDERMEN

The Board of Aldermen cannot take over the functions or perform the duties of a board of adjustment, it being a legislative body rather than a quasi judicial body.

19 June 1962

MUNICIPAL CORPORATIONS; ZONING ORDINANCES; SPOT ZONING

As a general rule a zoning ordinance of a municipality is valid if it emanates from powers granted by the Legislature to the municipality, if it has a reasonable tendency to promote the public safety, health,

morals, comfort, welfare and prosperity of the community, and if its provisions are not arbitrary, unreasonable or confiscatory.

Where a municipality rezones a portion of a city block from residential to manufacturing, and the question of "spot zoning" arises, the basic rule to determine the validity of the amending ordinance is the same rule used to determine the validity of the original ordinance: the governing board must act in good faith. It cannot act arbitrarily or capriciously. If the conditions existing at the time of the proposed change are such as would have originally justified the proposed action, the governing board has the power to act. *WALKER v. ELKIN*, 254 N. C. 85; *HELMS v. CHARLOTTE*, 255 N. C. 647.

NURSES

23 March 1962

NURSES; PHYSICIANS AND SURGEONS

A registered nurse under authority of an order or prescription of a licensed physician, either oral or written, and in the presence or absence of the prescribing physician, may lawfully start and administer blood or other intravenous medication or injections to patients.

OATHS

9 March 1962

OATHS; MEMBERS OF LOCAL GOVERNMENT COMMISSION

Members of Local Government Commission are required to take oath as officers appointed to positions of trust and profit.

25 May 1962

OATHS; PUBLIC OFFICER; MEMBER OF COUNTY ABC BOARD REQUIRED TO TAKE OATH

A member of a county Alcoholic Board of Control is a public officer and is required to take an oath under the constitutional and statutory provisions relating to oaths of public officers.

OSTEOPATHY

27 October 1961

OSTEOPATHY; USE OF ANTIBIOTICS, NARCOTICS AND ANTISEPTICS

An osteopath would not have the right in this State to perform surgery or to use antibiotics, narcotics and antiseptics in dealing with his patients.

PERSONNEL DEPARTMENT

12 September 1961

PERSONNEL DEPARTMENT; STATE PERSONNEL ACT; 1961 LEGISLATIVE PAY INCREASE; NOT APPLICABLE TO TEMPORARY POSITIONS

The 1961 legislative increase in salaries of State employees, effective July 1, 1961, applied only to full-time, permanent employees who had such status immediately prior to July 1.

PHYSICIANS

23 March 1962

PHYSICIANS AND SURGEONS; NURSES; MEDICINE

A registered nurse under authority of an order or prescription of a licensed physician, either oral or written, and in the presence or absence of the prescribing physician, may lawfully start and administer blood or other intravenous medication or injections to patients.

PRISONERS

28 November 1960

PRISONERS; COUNTY JAILS; PRISONERS SENTENCED TO WORK ON COUNTY PROPERTIES; WORKMEN'S COMPENSATION LIABILITY

A county is not liable under Workmen's Compensation for disability resulting from injuries sustained by a person working for the county under a sentence assigning him directly to the county jail, rather than the State Prison System. G. S. 148-32 and G. S. 97-13(c).

PROBATE AND REGISTRATION

13 July 1961

PROBATE AND REGISTRATION; ACKNOWLEDGMENT AND PROBATE OF MEMORANDA OF ACTION

The Memorandum of Action required to be recorded with the Register of Deeds by G. S. 136-104 and G. S. 136-111 does not require the acknowledgment nor is it necessary to submit the same to the Clerk for adjudication and order of registration. Prior to recording, the Memorandum of Action should be recorded in Deed or Deed of Trust Books and indexed with the Highway Commission shown as grantee and the property owners shown as grantor.

29 January 1962

PROBATE AND REGISTRATION; ACKNOWLEDGMENT OF AUTHORITY TO AFFIX SEAL

G. S. 47-41 does not exclude other forms of corporate probate which would be deemed sufficient in law. It is sufficient at common law if person authorized to affix seal acknowledges that he has such authority and that he has affixed the seal.

25 June 1962

PROBATE AND REGISTRATION; INDEXING

Trust Receipts drawn in accordance with the Uniform Trust Receipts Act, when recorded, should be indexed to the trustee as grantor or mortgagor and to the entruster as grantee or mortgagee.

15 August 1961

PROBATE AND REGISTRATION; JUDGE OF COUNTY RECORDER'S COURT NOT AUTHORIZED

As a general rule judges of county recorder's courts do not have authority to take probate of instruments and writings required or allowed by law to be registered in the office of the Register of Deeds.

3 January 1961

PROBATE AND REGISTRATION; PLATS AND MAPS MADE PRIOR TO JANUARY 1, 1960

Maps made prior to January 1, 1960, may be certified and recorded pursuant to G. S. 47-30 prior to amendment by the 1959 General Assembly.

2 August 1960

PROBATE AND REGISTRATION; PROOF OF EXECUTION OF INSTRUMENTS
BEFORE OFFICIALS OF FOREIGN COUNTRIES

The officials of foreign countries named in G. S. 47-2 may take the acknowledgment and proof of the execution of all instruments and writings as are permitted or required by law to be registered in this State.

PUBLIC OFFICERS

17 May 1961

PUBLIC OFFICERS; CLERKS OF SUPERIOR COURT; ADMINISTRATION OF
ESTATES; RECORD OF ACCOUNTS; REPORTS OF SALES OF
PERSONAL PROPERTY

G. S. 2-42(14) requires that clerks of superior court keep a record of accounts "in which must be recorded inventories and annual accounts of executors, administrators, collectors, trustees under assignments for creditors, and guardians, as audited by him from time to time." Except insofar as they may constitute a part or portion of the annual account of an executor, administrator or other fiduciary administering a decedent's estate, there is no requirement that reports of sales of personal property in connection with administration of decedents estates must be recorded in the Record of Accounts.

11 August 1960

PUBLIC OFFICERS; CLERKS OF SUPERIOR COURT; ANNUAL REPORTS;
PUBLISHING BY REGISTER OF DEEDS

G. S. 2-46 provides that the clerk of superior court's accounts may be audited by a certified public accountant at any time during the year and is not restricted to the first Monday in December. G. S. 2-47 provides that the certified public accountant's audit be approved by the county board of commissioners and, within 20 days after the approved report is filed with the register of deeds, it must be published and posted.

4 August 1960

PUBLIC OFFICERS; CLERK OF SUPERIOR COURT; APPOINTMENT OF
ANCILLARY GUARDIAN FOR NONRESIDENT INCOMPETENT

Under G. S. 35-3.1, the clerk of superior court is authorized to appoint an ancillary guardian for the purpose of collecting rents and profits from real estate held in this State by an incompetent whose residence is without the State.

18 September 1961

PUBLIC OFFICERS; CLERKS OF COURT; AUTHORITY TO APPOINT AND
DESIGNATE NUMBER OF ASSISTANTS AND DEPUTY CLERKS IN
CERTAIN COUNTIES

The board of commissioners in those counties coming under G. S. 153-48.5 are authorized and empowered to fix and determine the *number* of salaried deputies and assistant clerks of the Superior Court; however, G. S. 2-10 authorizes the clerk of the Superior Court, by and with the written consent and approval of the Superior Court judge resident in his district, to appoint these deputies and assistant clerks of the Superior Court.

19 January 1962

PUBLIC OFFICERS; CLERKS OF THE SUPERIOR COURT; AUTHORITY TO
ENTER ORDER DISMISSING APPEAL TO THE SUPREME COURT UPON
MOTION OF THE APPELLEE CONSENTED TO BY THE APPELLANT

Where the appellant, appealing to the Supreme Court, from a ruling of the Superior Court, wishes to abandon his appeal and where no case on appeal has been served and none has been filed in the Supreme Court and upon motion of the appellee, consented to by the appellant, to dismiss the appeal the Clerk of the Superior Court has the authority to order such an appeal dismissed since said order is in the nature of a consent judgment operating to terminate the proceedings.

22 November 1960

PUBLIC OFFICERS; CLERKS OF COURT; COSTS; COMMISSION ON DEPOSITS
OF ESTIMATED COMPENSATION

Clerks of Court are not authorized to collect the commission of three per cent on sums up to \$500.00 and one per cent on the excess, on deposits of estimated just compensation made by the State Highway Commission upon institution of eminent domain proceedings under Article 9 of Chapter 136 of the North Carolina General Statutes.

19 March 1962

PUBLIC OFFICERS; CLERKS OF COURT; DEPUTY CLERK OF COURT; AGE

A person must be at least twenty-one years of age to serve as a deputy clerk of the superior court.

24 October 1960

PUBLIC OFFICERS; CLERKS OF SUPERIOR COURT; ESTATE OF MINOR
IN HANDS OF CLERK; TRANSFER OF REST OF MINOR'S ESTATE
OUT OF STATE

In every case where the estate of a minor is sought to be transferred out of the hands of any person holding for the ward in this State into the hands of a foreign fiduciary, the procedure prescribed by Article 7, Chapter 33 of the General Statutes must be followed. Any transfer made without adherence to the procedure prescribed would be improper.

11 April 1962

PUBLIC OFFICERS; CLERKS OF COURT; FEES; ASSIGNMENTS FOR
BENEFIT OF CREDITORS

Fees charged by clerks of court in assignments for the benefit of creditors are governed by the general clerk's fee bill, as set out in G. S. 2-26, or by local fee bills and should be charged as part of the costs of the proceeding against the estate and not individually against claimants, as an assignment for the benefit of creditors is a species of special proceeding.

21 September 1961

PUBLIC OFFICERS; CLERKS OF COURT; FEES; FEE FOR AUDITING
FINAL ACCOUNT

The Clerk of Superior Court's fee under G. S. 2-34 for auditing a final account should be computed on the basis of total receipts and disbursements since the last annual account only, and should not be based on the total amount of receipts and disbursements during the entire continuation of the fiduciary representation.

22 June 1961

PUBLIC OFFICERS; CLERKS OF COURT; INVESTMENT OF FUNDS HELD
AS FIDUCIARY; ENTITLEMENT TO PROCEEDS OF INVESTMENT

Income from investment of funds in the hands of Clerk of Superior Court belongs to those persons entitled to the principal funds.

2 August 1960

PUBLIC OFFICERS; CLERKS OF THE SUPERIOR COURT; INVESTMENT
OF TRUST FUNDS

G. S. 2-56 involves deposits of funds held by the clerks of the superior court and requires the protections therein called for. G. S. 36-3 involves investment of funds held by the clerks of the superior court and requires only the authorization of the Insurance Commissioner or an officer of the Home Loan Bank at Winston Salem or other government agency having supervision in order that stock of building and loan associations and federal savings and loan associations be purchased.

24 January 1961

PUBLIC OFFICERS; CLERKS OF SUPERIOR COURT; JUVENILE COURTS;
CLERK AS JUDGE OF JUVENILE COURT; COMPENSATION

Where the General Statutes provides that the clerk of superior court shall be afforded compensation for performance of his duties as judge of juvenile court, independent of any compensation which may come to him as clerk of the superior court, but a subsequent local act provides that the clerk shall receive a salary for his service "as such clerk and as judge of the juvenile court and clerk of the recorder's court", the local act, being later in point of time and local and special rather than general, controls. Thus, county commissioners would be without authority to separately fix compensation for the clerk of superior court for performing the duties of judge of the juvenile court, the one salary fixed according to the local act being the only one to which the clerk is entitled for the performance of all his duties both as clerk of superior court and judge of the juvenile court.

16 May 1961

PUBLIC OFFICERS; CLERKS OF COURT; PAYMENT TO MINOR
MARRIED FEMALES

A Clerk of the Superior Court, in paying to a married minor female money recovered on a judgment, would be doing so at his own peril. It is advisable that a guardian be appointed to receive the money.

6 July 1960

PUBLIC OFFICERS; CLERK OF SUPERIOR COURT; SALES UNDER POWER
OF SALE; UPSET BID

Under G. S. 14-21.27, the clerk of the superior court may not accept an upset bid, under a foreclosure sale which is being held under the authority in a deed of trust, after ten days have elapsed from the date of the filing of the trustee's report of the initial sale.

15 March 1961

PUBLIC OFFICERS; CLERKS OF COURT; TRUSTS; AUTHORITY OF CLERK
OF COURT OVER TRUSTS AND TRUSTEES UNDER WILLS

Except where the Clerk of Superior Court appoints a successor trustee under the provisions of G. S. 28-53, he has no jurisdiction to make the findings necessary to a proper qualification of a trustee appointed under a will, and even if such a trustee desires to qualify before the Clerk, the clerk has no statutory authority to permit such qualification.

Trustees under wills are required to file inventories and accounts in the same manner and at the same time as are required of executors and administrators.

25 May 1962

PUBLIC OFFICERS; COMMISSIONER OF PUBLIC TRUST CONTRACTING
FOR OWN BENEFIT; ALDERMAN

Sale of supplies to a town by a member of the board of aldermen constitutes a violation of G. S. 14-234 under the general law of the State.

29 July 1960

PUBLIC OFFICERS; COMMISSIONER OF PUBLIC TRUST CONTRACTING
FOR OWN BENEFIT; CITY BOARD MEMBER

It is not thought that G. S. 14-236 and G. S. 14-237 prohibit a member of the city board of education from selling building materials to a contractor who is building a school building for the involved city board of education.

9 March 1962

PUBLIC OFFICERS; COMMISSIONER OF PUBLIC TRUST CONTRACTING
FOR OWN BENEFIT; CITY COUNCIL MEMBER AND PRESIDENT
OF SUB-CONTRACTOR

Member of a city council, who is president of construction firm anticipating a sub-contract under a prime contract with the city, would be in a position to accept pecuniary profit to himself if the sub-contract were let, in violation of G. S. 14-234.

17 January 1961

PUBLIC OFFICERS; COMMISSIONER OF PUBLIC TRUST CONTRACTING
FOR OWN BENEFIT; COUNTY COMMISSIONER

A county commissioner would violate G. S. 14-234 if he should contract either directly or indirectly with the county for laundry service, book sales and food products to any county institution or agency.

5 December 1960

PUBLIC OFFICERS; COMMISSIONER OF PUBLIC TRUST CONTRACTING
FOR HIS OWN BENEFIT; DIRECTOR OF PUBLIC TRUST

It would be violative of G. S. 14-234 for a director of public trust to be interested in a contract for the purchase of property by a board of which he is a member even though bids for the contract were awarded through competitive bidding.

26 October 1960

PUBLIC OFFICERS; COMMISSIONER OF PUBLIC TRUST CONTRACTING
FOR OWN BENEFIT; EMPLOYEE OF ABC BOARD

Under G. S. 14-236 it would be a misdemeanor for an employee of a county ABC Board to sell fuel oil to the county ABC Board.

12 June 1962

PUBLIC OFFICERS; COMMISSIONER OF PUBLIC TRUST CONTRACTING
FOR OWN BENEFIT; MEMBERS OF URBAN REDEVELOPMENT COMMISSION
HAVING DIRECT OR INDIRECT INTEREST

G. S. 160-461 and G. S. 14-234 prohibit a member of a city redevelopment commission from acquiring any interest, direct or indirect, in a redevelopment project, or property included or planned to be included in a redevelopment area, nor may he have any interest, direct or indirect, in any contract for services or materials or with a redeveloper relating to such project. An officer of a corporation, who is also a member of the redevelopment commission, comes within the statutory prohibition when the corporation contracts with the commission for materials, services, supplies, etc. or acquires property in the redevelopment area. Such a contract would be void and unenforceable. *INSULATION CO. v. DAVIDSON COUNTY*, 243 N. C. 252.

7 September 1960

PUBLIC OFFICERS; COMMISSIONER OF PUBLIC TRUST CONTRACTING
FOR OWN BENEFIT; SCHOOL PRINCIPAL

G. S. 14-263 making it a misdemeanor for certain board members or their officer, agent, manager, teacher or employee to have any pecuniary interest in supplying any goods, wares or merchandise of any nature or kind whatsoever to any of the referred to institutions or schools is broad enough to cover the situation of a school principal selling automobile insurance to the county school board by which he is employed.

27 April 1961

PUBLIC OFFICERS; CONSTABLES; SERVICE OF EVICTION ORDERS

When a constable or other officer has removed goods from a dwelling in conformity with an eviction order or writ of possession and placed the same upon the sidewalk or on the edge of the street, he has legally executed the process directed to him and the care and custody of the removed property is the responsibility of the owner thereof.

6 November 1961

PUBLIC OFFICERS; CORONERS; BINDING DEFENDANT OVER AFTER
INQUEST FOR AIDING AND ABETTING

Under G. S. 152-7(4), a coroner may bind a defendant over after inquest if probable cause found that defendant is probably guilty of any crime in connection with the death of the deceased.

15 June 1961

PUBLIC OFFICERS; HIGHWAY COMMISSION CHAIRMAN, MEMBERS;
STATUS AFTER EXPIRATION OF TERM

The Chairman and members of the Highway Commission, the Director of Highways and Controller are officers within the meaning of G. S. 128-7 and continue in their respective offices until their successors are appointed and duly qualified.

18 July 1960

PUBLIC OFFICERS; JUSTICES OF THE PEACE; APPOINTMENT BY
LEGISLATURE; APPOINTMENT BY JUDGE

Article 14A, Chapter 7, of the General Statutes is applicable only to those counties which are not exempt and which, by appropriate resolutions of county commissioners, have adopted the article.

29 September 1960

PUBLIC OFFICERS; JUSTICES OF THE PEACE; APPOINTMENT
BY RESIDENT JUDGE

Under the provisions of Section 7-115 of the General Statutes, the resident superior court judge has been given the power to appoint justices of the peace and the Governor no longer has such appointive power.

9 October 1961

PUBLIC OFFICERS; JUSTICES OF THE PEACE; CIVIL JUDGMENTS; TIME
FOR ISSUING TRANSCRIPTS

A justice of the peace, in a civil action, is required to give a transcript of the judgment to the party in whose favor it was rendered on the demand of such party; the fact that defendant gives notice of appeal in open court is not enough to stay execution on the judgment.

3 November 1960

PUBLIC OFFICERS; JUSTICES OF THE PEACE; COMMITMENT FOR FAILURE
TO PROVIDE SECURITY ON A PEACE WARRANT

A commitment by a justice of the peace under G. S. 15-14 for failure of a person to make recognizance under a peace warrant is not a judgment based upon a plea of guilty with a resulting sentence. Under such a commitment, a justice of the peace cannot sentence a person to 6 months and assign him to work on the road.

22 May 1961

PUBLIC OFFICERS; JUSTICES OF THE PEACE; DATE OF QUALIFICATION
PRIOR TO EFFECTIVE DATE OF APPOINTMENT

G. S. 7-114 requires a person who is appointed justice of the peace to take oath before his term of office begins. Thus, qualification prior to effective date of appointment is permitted by statute.

19 May 1961

PUBLIC OFFICERS; JUSTICE OF THE PEACE; DELEGATION OF A PRIVATE
CITIZEN TO MAKE ARRESTS; AUTHORITY TO APPOINT
SPECIAL CONSTABLES

It is not contemplated by the statute that a justice of the peace may appoint a special constable except in extraordinary cases.

1 June 1962

PUBLIC OFFICERS; JUSTICE OF THE PEACE; DOUBLE OFFICE HOLDING

Although there is a constitutional provision prohibiting double office holding in general, a specific exception is made in the case of a justice of the peace.

28 July 1960

PUBLIC OFFICERS; JUSTICES OF THE PEACE; DUTY OF JUSTICE
OF THE PEACE TO ACCOUNT FOR AND REPORT TO COUNTY
COMMISSIONERS

When a county does not operate under Article 14A of Chapter 7 of the General Statutes, the specific provisions of G. S. 115-98 and G. S. 153-47 control, and it is the duty of a justice of the peace to make an accounting for fines, penalties, etc., to the county treasurer and the county finance committee.

18 September 1961

PUBLIC OFFICERS; JUSTICES OF THE PEACE; ELECTED FOR ONE
TOWNSHIP BUT MOVING OFFICE TO ANOTHER TOWNSHIP IN THE
SAME COUNTY

A justice of the peace elected or appointed for one township may not set up his office and perform a large portion of his duties in some other township within the county. DAVIS v. SANDERLIN, 119 N. C. 84.

G. S. 7-116 provides for the forfeiture of a justice of the peace's office if he removes his residence to another township and does not return for a space of six months.

Under G. S. 7-127, a justice of the peace must hear all matters within his jurisdiction throughout the county in his own township.

31 May 1962

PUBLIC OFFICERS; JUSTICES OF THE PEACE; FAILURE TO MAKE
REPORTS; REMOVAL FROM OFFICE

A justice of the peace may be removed from office for failing to file monthly reports with the clerk of the superior court as required by G. S. 143-166(n).

10 February 1961

PUBLIC OFFICERS; JUSTICE OF THE PEACE; FINES AND FORFEITURES;
NO DEDUCTIONS FOR NORMAL COSTS; COMMITMENT FOR FAILURE TO
PROVIDE SECURITY ON PEACE WARRANT

A justice of the peace has no authority to deduct his costs or fees of law enforcement officers from a forfeited recognizance bond, and if he does, he is subject to prosecution under G. S. 115-98(4).

When a justice of the peace commits a person under G. S. 15-34, it is of no concern of his as to whether or not the person is sent out to work on the roads under the supervision of the State Prison Department.

29 September 1960

PUBLIC OFFICERS; JUSTICES OF PEACE; JURISDICTION; VIOLATIONS
OF SPEED LAWS AND ORDINANCES

Justices of the peace have no jurisdiction to try violations of any State speed law inasmuch as the possible punishment thereof can exceed the jurisdiction of such justices of the peace. Justices of the peace have jurisdiction to try violations of local speed ordinances established under the provisions of G. S. 20-141(f1) inasmuch as the maximum punishment which can be imposed for violation of such ordinances is a fine of \$50.00 or imprisonment for not more than 30 days.

6 July 1960

PUBLIC OFFICERS; JUSTICES OF THE PEACE; JURY FEES;
CONSTABLE FEES

Under the general law as provided in G. S. 7-157, constables who summon jurors in a justice of the peace court are allowed the same fee for their services as are allowed the summoned jurors.

26 August 1960

PUBLIC OFFICERS; JUSTICES OF THE PEACE; JUSTICE MAY ACT
ANYWHERE IN THE COUNTY

G. S. 7-127 does not contemplate that a justice of the peace elected or appointed for one township can set up his office and perform a large portion of his duties in some other township in the county.

10 August 1960

PUBLIC OFFICERS; JUSTICE OF THE PEACE; PRIVATE DETECTIVE

A person may hold the office of justice of the peace and also become a private detective.

8 December 1961

PUBLIC OFFICERS; JUSTICE OF THE PEACE; SUIT ON JUDGMENT

A suit on a justice of the peace judgment is an independent action and must be commenced by the issuance of summons, filing of complaint, and service thereof, as in any other action to recover a debt.

6 November 1961

PUBLIC OFFICERS; JUSTICES OF THE PEACE; TRANSFER OF CASE

There is no statute requiring a justice of the peace to transfer a proceeding, civil or criminal, from his court to a recorder's court.

8 August 1960

**PUBLIC OFFICERS; NOTARIES; OUT-OF-STATE NOTARIES; SEAL;
NAME ON SEAL**

The requirement of Section 10-9 of the General Statutes that a notarial seal contain the notary's name applies only to North Carolina notaries and has no application to notarial seals affixed by notaries of other states.

27 December 1961

**PUBLIC OFFICERS; NOTARIES PUBLIC; PERFORMING DUTIES OUTSIDE
COUNTY OF RESIDENCE**

A North Carolina notary public may perform official duties in any county in this State.

15 June 1961

**PUBLIC OFFICERS; OFFICES AND PUBLIC OFFICERS; STATUS
AFTER EXPIRATION OF TERM**

The Chairman and members of the Highway Commission, the Director of Highways and Controller are officers within the meaning of G. S. 128-7 and continue in their respective offices until their successors are appointed and duly qualified.

26 April 1962

PUBLIC OFFICERS; REGISTER OF DEEDS; MARRIAGE LICENSE; INFANTS

The register of deeds may issue a marriage license to a boy and girl, each fourteen years of age, where the girl is pregnant and the parents of the infants have consented to the marriage.

15 September 1961

PUBLIC OFFICERS; REGISTER OF DEEDS; PROBATE AND REGISTRATION;
PLATS AND MAPS MADE PRIOR TO JANUARY 1, 1960

It is specifically provided in G. S. 47-30, relating to the recording of maps, as rewritten by Chapter 1235 of the Session Laws of 1959, that nothing in the section as rewritten shall be deemed to prevent the recording of any map made prior to January 1, 1960.

26 October 1960

PUBLIC OFFICERS; REGISTER OF DEEDS; REGISTRATION OF
INSTRUMENTS; REVENUE STAMPS

A register of deeds has no discretion in accepting instruments in writing delivered to him for registration if tendered the fees therefor, and if a register of deeds fails to accept such instruments he may not only be civilly liable to parties injured by his delay, but would also be guilty of a misdemeanor for which he could be punished and removed from office under the provisions of G. S. 161-27. The absence of Federal revenue stamps on a deed does not invalidate the deed.

6 January 1961

PUBLIC OFFICERS; SHERIFFS; INVESTIGATION OF ORIGIN OF
RURAL FIRES

The chief of a voluntary fire department has no authority or responsibility under G. S. 69-1 for conducting investigations into the origin of a fire. With respect to fires occurring outside a municipality or town, the sheriff of the county is authorized, along with the Commissioner of Insurance, to investigate the cause, origin and circumstances of the fire, and the duty of making the "preliminary investigation" is imposed upon the "... sheriff of the county where such fire occurs outside of a municipality ...".

8 August 1960

PUBLIC OFFICERS; SHERIFFS; TERRITORIAL JURISDICTION OF
SHERIFF TO ARREST WITH WARRANT OUTSIDE HIS COUNTY

Under the common law and in the absence of specific statutory authority sheriffs have no jurisdiction beyond the territorial boundaries of the area in which they have been selected, that is the county.

13 April 1961

PUBLIC OFFICERS; TRUSTEES OF THE UNIVERSITY OF NORTH
CAROLINA; EXPIRATION OF TERM; HOLDING OVER

Members of the Board of Trustees of the University of North Carolina are public officers and, under G. S. 128-7, hold over beyond the expiration of their terms until their successors are elected by the General Assembly. Members of the Board of Trustees of the University of North Carolina are exempt from the constitutional prohibition against double office holding as commissioners of public charities.

PURCHASE AND CONTRACT

11 May 1961

PURCHASE AND CONTRACT; CONSIDERATION OF RESALE VALUE AND
OPERATION COSTS IN AWARDING CONTRACTS

Anticipated resale value and/or operating costs of items to be purchased are elements appertaining to the "quality" of these articles, thus may be considered in awarding contracts under G. S. 143-52.

RETIREMENT

21 February 1962

RETIREMENT; LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT
SYSTEM; CITY ABC BOARD; RIGHT TO USE FUNDS TO PARTICIPATE

A local ABC board has authority to use ABC funds for the purpose of placing ABC employees within the coverage of the Local Governmental Employees' Retirement System.

13 September 1960

RETIREMENT; LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT
SYSTEM; COUNTY HEALTH DEPARTMENT; COUNTY WELFARE
DEPARTMENT; SEPARATE COVERAGE

Under the provisions of G. S. 128-37 and G. S. 128-37.1 a board of county commissioners may elect to bring into the Local Governmental Employees' Retirement System the employees of the welfare department separately, the employees of the health department separately, or the employees of both departments jointly.

10 July 1961

RETIREMENT; LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT
SYSTEM; COUNTY PARTICIPATION; MEMBERSHIP OF ALL ELIGIBLE
EMPLOYEES COMPULSORY

When a local governmental unit participates in the Local Governmental Employees' Retirement System, every employee of the unit must become a member except (1) those who elect not to at the time the unit commences participation and (2) those who are eligible for membership in and join and continue to maintain their membership in the Law Enforcement Officers' Benefit and Retirement Fund.

7 July 1961

RETIREMENT; LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT
SYSTEM; FIREMEN'S PENSION FUND; DUAL EMPLOYEE
MEMBERSHIP PERMISSIBLE

A person who belongs to the Local Governmental Employees' Retirement System may, if otherwise eligible, join the Firemen's Pension Fund. Receiving benefits from the Fund would not bar such person's eligibility for benefits from the Retirement System.

13 June 1961

RETIREMENT; LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT
SYSTEM; LAW ENFORCEMENT OFFICERS' BENEFIT AND
RETIREMENT FUND; COMPULSORY MEMBERSHIP

An employee who is eligible for membership in both the Local Governmental Employees' Retirement System and the Law Enforcement Officers' Benefit and Retirement Fund must be a member of one or the other. If an employee withdraws or is dropped from membership in the Law Enforcement Officers' Fund, the local unit should immediately enroll such employee in the Local Governmental Retirement System.

2 February 1962

RETIREMENT; TEACHERS' AND STATE EMPLOYEES' RETIREMENT
SYSTEM; CREDITABLE SERVICE; CIVIL AIR PATROL

Service in the Civil Air Patrol does not constitute service in the "armed services of the United States" within the meaning of the North Carolina Teachers' and State Employees' Retirement Act.

30 March 1962

RETIREMENT; TEACHERS' AND STATE EMPLOYEES' RETIREMENT
SYSTEM; FIVE CONSECUTIVE YEARS ABSENCE FROM SERVICE;
CESSATION OF MEMBERSHIP

When a member of the Teachers' and State Employees' Retirement System is absent from service more than five years in any period of six consecutive years, he automatically ceases to be a member of the System and his accumulated contributions with appropriate interest are returned to him.

23 August 1961

RETIREMENT; TEACHERS' AND STATE EMPLOYEES' RETIREMENT
SYSTEM; NAMED BENEFICIARY; ASSUMED NAME

If a person named as beneficiary by a deceased member of the Teachers' and State Employees' Retirement System can be identified as a specific individual living at the time of the member's death, he or she is entitled to benefits as a beneficiary irrespective of whether such person was designated under an assumed name.

8 February 1962

RETIREMENT; TEACHERS' AND STATE EMPLOYEES' RETIREMENT
SYSTEM; SOCIAL SECURITY; TAX SHELTERED ANNUITIES;
WHAT CONSTITUTES SALARY

Even though a teacher may authorize the retention of a portion of her salary for the purpose of purchasing tax sheltered annuities, such retained salary is subject to Retirement System deductions.

11 September 1961

RETIREMENT; U. S. S. NORTH CAROLINA BATTLESHIP COMMISSION;
SOCIAL SECURITY; TEACHERS' AND STATE EMPLOYEES' RETIREMENT
SYSTEM; STATUS OF COMMISSION

The U. S. S. North Carolina Battleship Commission is a bona fide State agency and, for social security and retirement system purposes, should be treated in the same manner as other State agencies.

SANITARY DISTRICTS

9 May 1962

SANITARY DISTRICTS; ELECTION OF MEMBERS; WRITE-IN VOTES; FILLING VACANCY; HOLDING OFFICE UNTIL SUCCESSOR IS ELECTED AND QUALIFIED

A member of Sanitary District Board, created under Article 12, Chapter 130, may be elected by write-in votes in the general election. The general election laws are applicable except to the extent varied by the Sanitary District laws. A member of the Sanitary District Board who is elected and qualified to the County Board of Commissioners, automatically and instantly vacates the first office upon his acceptance of the second office.

Where the Sanitary District Board consists of three members, and only two members are seeking re-election in the general election, and there are no write-in votes for the third member, the member not seeking re-election will continue to serve until his successor has been elected, or appointed, and duly qualified.

8 August 1960

SANITARY DISTRICTS; GARBAGE COLLECTION; EXCLUSIVE FRANCHISE

A sanitary district is authorized either to collect and dispose of garbage through its own employees or by contract with an independent contractor, but there is no statutory authority under which the sanitary district could prohibit others from also engaging in the garbage collection business.

18 June 1962

SANITARY DISTRICTS; TAXES; NO EXEMPTIONS

The mere fact that a particular property owner does not have water and sewer service does not constitute any basis for exemption from a sanitary district tax levy.

10 August 1960

SANITARY DISTRICTS; USE OF FIRE FIGHTING EQUIPMENT OUTSIDE OF DISTRICT

A sanitary district is not authorized to establish and maintain a fire department outside the confines of the district to furnish fire protection to the areas outside the district.

9 February 1961

SANITARY DISTRICT; WATER AND SEWER; COMPULSORY CONNECTIONS;
PROCEDURE WHEN IMPRACTICAL

When it is impractical for a real property owner in a sanitary district to cause toilet connections to be made with the district sewerage system, such person may be compelled to install a septic tank or some other appropriate installation in accordance with the regulations of the State Board of Health.

SOCIAL SECURITY

12 August 1960

SOCIAL SECURITY; DEDUCTIONS; NURSE OR DOMESTIC PAID
THROUGH WORKMEN'S COMPENSATION

Pursuant to G. S. 97-40.1, in cases of certain types of extremely serious and disabling injuries, Workmen's Compensation payments are made to pay the salary of a domestic worker or nurse to care for the injured worker. The right to hire, fire, and supervise the performance of duties by the domestic worker or nurse rests with the worker and not with the Industrial Commission. Therefore, such a person is not a State employee.

19 May 1961

SOCIAL SECURITY; LOCAL CIVIL DEFENSE AGENCIES; CITY EMPLOYEES;
COUNTY EMPLOYEES; JOINT CITY-COUNTY EMPLOYEES

The organization of local civil defense agencies varies greatly. Some are county agencies; some are city agencies; and some are joint city-county-agencies.

8 February 1962

SOCIAL SECURITY; TEACHERS' AND STATE EMPLOYEES' RETIREMENT
SYSTEM; TAX SHELTERED ANNUITIES; WHAT CONSTITUTES SALARY

Even though a teacher may authorize the retention of a portion of her salary for the purpose of purchasing tax sheltered annuities, such retained salary is subject to Retirement System deductions.

11 September 1961

SOCIAL SECURITY; U. S. S. NORTH CAROLINA BATTLESHIP COMMISSION;
TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM;
STATUS OF COMMISSION

The U. S. S. North Carolina Battleship Commission is a bona fide State agency and, for social security and retirement system purposes, should be treated in the same manner as other State agencies.

STATE AUDITOR

14 December 1960

STATE AUDITOR; AUTHORITY OF THE STATE AUDITOR TO ISSUE WARRANTS FOR UNEMPLOYMENT BENEFITS

The issuance of warrants for unemployment benefits should be handled in accordance with the provisions set out in G. S. 143-3.1 and G. S. 143.3-2.

STATE BOARDS AND COMMISSIONS

8 May 1962

STATE BOARDS AND COMMISSIONS; ABC BOARD; COUNTY ABC BOARD; GROUP ACCIDENT AND HEALTH INSURANCE; EMPLOYEES OF COUNTY ABC BOARD AND THEIR DEPENDENTS

County ABC Board is not authorized to purchase group insurance covering dependents of its employees; however, certain benefits payable to the employee on account of hospitalization or medical treatment of his dependents may be provided in a group accident and health policy. (G. S. 143-3.2.

6 November 1961

STATE BOARDS AND COMMISSIONS; ABC BOARD SUBJECT TO MINIMUM WAGE ACT; ABC NET PROFITS

Local county ABC board is not subject to Minimum Wage Act, Article 11 of Chapter 95 of the General Statutes.

County ABC board may, in its discretion, expend for education as to the effects of the use of alcoholic beverages and for the rehabilitation of alcoholics, not more than 5% of its total profits, G. S. 18-45. Total profits are total receipts less general operating expenses. Amounts required to be expended for law enforcement and retained as sufficient and proper working capital are not general operating expenses.

1 November 1961

STATE BOARDS AND COMMISSIONS; BOARD OF HIGHER EDUCATION; INSTITUTIONS OF HIGHER EDUCATION; TUITION FEES OF RESIDENT AND NONRESIDENT STUDENTS; RESIDENCE OF MILITARY PERSONNEL STATIONED IN NORTH CAROLINA; TUITION FEES OF CHILDREN OF MILITARY PERSONNEL STATIONED IN NORTH CAROLINA

Under the present laws and administrative rulings of this State non-resident students of institutions of higher education are charged greater or higher tuition fees than those charged resident students; the question

of residence is largely a matter of intent, and the same rules of determining residence are to be used in the case of military personnel stationed in North Carolina as would be used in determining residence of civilians who come into North Carolina.

18 October 1961

STATE BOARDS AND COMMISSIONS; CHIROPRACTIC EXAMINERS;
LICENSES; RENEWAL OF LICENSES; NO AUTHORITY TO
REQUIRE CONTINUING STUDY

The State Board of Chiropractic Examiners does not have authority to adopt regulations requiring licensees of the board to participate in certain annual educational programs as a condition for securing license renewal.

25 August 1961

STATE BOARDS AND COMMISSIONS; CONSERVATION AND DEVELOPMENT
BOARD; AUTHORITY TO REGULATE CONSTRUCTION OF FISHING PIERS

The Board of Conservation and Development has no authority to promulgate regulations with respect to the location and construction of fishing piers. The Board has authority to regulate, prohibit, or restrict in time, place, character, or dimensions, the use of nets, appliances, apparatus, or means employed in taking or killing fish; to regulate the seasons at which the various species of fish may be taken in the several waters of the State; and to prescribe the maximum numbers and minimum sizes of fish which may be taken in the said several waters of the State, or which may be bought, sold, or held in possession by any person, firm, or corporation in the State.

16 May 1961

STATE BOARDS AND COMMISSIONS; COSMETIC ARTS; STATE BOARD OF
COSMETIC ARTS; APPRENTICES

The statute requires that a registered apprentice work at least six months under the supervision of a registered managing cosmetologist. This means six months of full-time work, not part-time.

18 December 1961

STATE BOARDS AND COMMISSIONS; EMPLOYMENT SECURITY COMMISSION;
EMPLOYMENT SECURITY LAW; ON-THE-JOB TRAINING UNDER THE
DIVISION OF VOCATIONAL REHABILITATION OF THE NORTH CAROLINA
DEPARTMENT OF EDUCATION; EMPLOYEE AS DEFINED UNDER
THE EMPLOYMENT SECURITY ACT

On-the-job trainees pursuing vocational education under the Division of Vocational Rehabilitation of the North Carolina Department of Education are not employees under the Employment Security Law.

31 January 1962

STATE BOARDS AND COMMISSIONS; EMPLOYMENT SECURITY COMMISSION;
EMPLOYMENT SECURITY LAW; SPECIAL EMPLOYMENT SECURITY
ADMINISTRATION FUND; USE OF SPECIAL EMPLOYMENT
SECURITY ADMINISTRATION FUNDS

The Employment Security Commission has the authority to use money derived from the Special Employment Security Administration Fund provided by G. S. 96-5(c) for the purpose of purchasing land and erecting thereon a building in order to enlarge and improve the activities and functions of the Commission.

20 July 1961

STATE BOARDS AND COMMISSIONS; EMPLOYMENT SECURITY COMMISSION;
POWERS OF REVIEW OF EMPLOYMENT SECURITY COMMISSION AND
SUPERVISORY AUTHORITY OF COMMISSION; ADJUDICATION
OF FALSE STATEMENT, MISREPRESENTATION

Where the Employment Security Commission invokes penalties against a claimant, cancels his benefit rights for one year, and/or incumbers his future benefits with an overpayment, the Commission has the authority to enact a regulation to automatically remove these hearings before the Commission and hold same subject to reversal or change because of conclusive evidence that the original decision and imposition of penalty was passed on a mistake of fact, which, if it had been known at the time, would have resulted in a decision in favor of the claimant.

7 September 1960

STATE BOARDS AND COMMISSIONS; HIGHWAY COMMISSION; AUTHORITY
TO CLOSE ROADS FOR CONSTRUCTION OR REPAIRS

The State Highway Commission is authorized under the provisions of G. S. 136-26 to close to travel sections of roads under construction and the State Highway Commission is not required to provide substitute access to property owners before exercising this authority.

12 July 1960

STATE BOARDS AND COMMISSIONS; HIGHWAY COMMISSION; SALE OF
ROAD BUILDING MATERIALS TO MUNICIPALITIES

The State Highway Commission is authorized to sell to municipalities for use on municipal streets roadbuilding materials, but is not authorized to sell such materials to municipalities for other uses.

24 January 1961

STATE BOARDS AND COMMISSIONS; LOCAL GOVERNMENT COMMISSION;
CONTRACTS FOR AUDITING SERVICES; APPROVAL OF ACCOUNTANT

In exercising his duty to approve contracts of local governmental units for independent audits pursuant to G. S. 153-143 the Director of Local Government would have authority to limit his approval of accountants to those who are either certified public accountants or registered accountants.

21 August 1961

STATE BOARDS AND COMMISSIONS; MILK COMMISSION;
COMPENSATION OF MEMBERS

G. S. 106-266.7(a) provides that members of the North Carolina Milk Commission shall receive such pay as shall be set by the Governor and Council of State. The fact that their pay may be stated in terms of per diem does not place them within the purview of Section 5 of Chapter 833 of the Session Laws of 1961.

1 March 1961

STATE BOARDS AND COMMISSIONS; N. C. CONFEDERATE CENTENNIAL
COMMISSION ELIGIBILITY FOR APPROPRIATION

Where a commission is authorized to apply to the Governor and Council of State for allotments from the Contingency and Emergency Fund to defray the costs of necessary expenses incident to its operation, this authority continues for the life of the commission even though the commission's existence may extend beyond the biennium in which the authority was granted.

25 September 1961

STATE BOARDS AND COMMISSIONS; PAROLES BOARD; PRISONERS WITH
WORK-RELEASE PRIVILEGES; SENTENCES; CUMULATIVE TERMS OF
SENTENCES; ELIGIBILITY OF PRISONER FOR WORK-RELEASE PRIVILEGES
SERVING LAST TERM OF CUMULATIVE SENTENCE; ELIGIBILITY OF
PRISONERS TO HAVE CASES CONSIDERED FOR PAROLE IN CASES
OF CUMULATIVE INDETERMINATE SENTENCES

A prisoner who has two sentences which are cumulative and who has served the first sentence is eligible for Work Release privileges where his last sentence is no more than five years. The Board of Paroles is authorized to give the State Prison Department authority to grant Work Release privileges to such prisoner since he is now "serving a term of imprisonment not exceeding five years", and has already served more than one-fourth of the total of his cumulative sentences.

7 May 1962

STATE BOARDS AND COMMISSIONS; PAROLES BOARD; WORK-RELEASE LAW; AUTHORITY TO GIVE PRISONER ADVANTAGE OF WORK-RELEASE LAW WHERE SENTENCED FOR NOT LESS THAN 3 YEARS NOR MORE THAN 5 YEARS IN ONE SENTENCE AND FOR 2 YEARS IN ANOTHER SENTENCE, BOTH SENTENCES TO RUN CONSECUTIVELY

In passing upon eligibility for work-release privileges the Board of Paroles is authorized to recognize the minimum time in an indeterminate sentence. Therefore, where one sentence is not less than three years nor more than five and another sentence for the same prisoner is for two years, each sentence to run consecutively, the prisoner would be entitled to work-release privileges unless and until the three years of the indeterminate sentence is extended by the Director of Prisons because of misconduct on the part of the prisoner.

22 May 1961

STATE BOARDS AND COMMISSIONS; PLUMBING AND HEATING CONTRACTORS; BIDS ON HEATING AND AIR CONDITIONING; IMPOSSIBILITY OF SEPARATION; APPROPRIATE PROCEDURE; JOINT VENTURES

In considering the provisions of G. S. 87, Article 2, it is legal for two or more contractors whose combined state qualifications include license for heating and air conditioning to submit a joint venture bid for a system of heating and air conditioning which is blended together and can not be separated.

Under the above circumstances, it is legal for one contractor who holds license for both heating and air conditioning contracting to enter into a joint venture bid with a foreign contractor who holds no license qualifications in accordance with the provisions of G. S. 87, Article 2.

25 August 1961

STATE BOARDS AND COMMISSIONS; PLUMBING AND HEATING CONTRACTORS; IRRIGATION SYSTEMS

A contractor who merely installs irrigation systems for plant growing purposes is not subject to the State Plumbing and Heating Contractors' Law.

14 June 1962

STATE BOARDS AND COMMISSIONS; REAL ESTATE LICENSING BOARD; EXEMPTIONS; SALES BY OWNER THROUGH EMPLOYEE

A regular employee of an owner or developer of real property, whether corporate or not, who engages in selling the property of his employer exclusively is exempt from the provisions of the Real Estate Licensing Act.

14 June 1962

STATE BOARDS AND COMMISSIONS; REAL ESTATE LICENSING BOARD;
SCOPE OF ACT; DEALER IN STANDING TIMBER

A person who engages in selling standing timber other than his own must be licensed as a real estate broker or salesman.

10 March 1961

STATE BOARDS AND COMMISSIONS; ROANOKE ISLAND HISTORICAL
ASSOCIATION; APPROPRIATIONS; CONTINGENCY AND EMERGENCY FUND;
ELIGIBILITY FOR APPROPRIATION TO DEFRAY COST OF
REBUILDING AMPHITHEATER

G. S. 143-204 provides that the Roanoke Island Historical Association, Incorporated, may apply for an allotment from the Contingency and Emergency fund in those years in which "The Lost Colony" operates at a deficit during the preceding season. While the drama "The Lost Colony" operates at a profit the Association is not eligible for an allotment from the Contingency and Emergency Fund.

23 August 1960

STATE BOARDS AND COMMISSIONS; STATE LEGISLATIVE BUILDING
COMMISSION; ACQUISITION PROPERTY BY CONDEMNATION

The State Legislative Building Commission has the authority to condemn lands of a utility or public service corporation in acquiring a site for the proposed State Legislative Building.

23 August 1960

STATE BOARDS AND COMMISSIONS; STATE LEGISLATIVE BUILDING
COMMISSION; CONDEMNATION PRIVATE PROPERTY

The State Legislative Building Commission has the authority to initiate condemnation proceedings to acquire property as a Legislative Building site without first obtaining approval of any executive department of the State government.

15 May 1962

STATE BOARDS AND COMMISSIONS; STATE PORTS AUTHORITY; AUTHOR-
ITY TO BORROW MONEY FOR CAPITAL IMPROVEMENT AND ASSIGN
RENTS FROM LEASE AS SECURITY THEREFOR

Upon the basis of G. S. 143-219 and G. S. 143-288 and the case of North Carolina State Ports Authority v. First Citizens Bank and Trust Co., 242 N. C. 416 (1955), this office is of the opinion that the North Carolina State Ports Authority is authorized to borrow money for the improvement of its facilities and assign the rents derived from such improvements to secure the repayment of any such money borrowed and also that any such note executed and delivered and the interest thereon is exempt from taxation in the State of North Carolina.

24 April 1962

STATE BOARDS AND COMMISSIONS; STRUCTURAL PEST CONTROL;
LICENSES

One individual may operate more than one structural pest control business under a license issued to him provided he exercises personal supervision over the work being done by each of the separate business establishments, and all work is done for the same centrally located business office under his personal supervision.

11 September 1961

STATE BOARDS AND COMMISSIONS; U. S. S. NORTH CAROLINA BATTLESHIP COMMISSION; SOCIAL SECURITY; TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM; STATUS OF COMMISSION

The U. S. S. North Carolina Battleship Commission is a bona fide State agency and, for social security and retirement system purposes, should be treated in the same manner as other State agencies.

3 October 1960

STATE BOARDS AND COMMISSIONS; UTILITIES COMMISSION;
PUBLIC RECORDS; DISCLOSURE

The only records which the Utilities Commission receives in the conduct of its affairs which are in public documents are those specifically accepted by other applicable statutes, such as: G. S. 62-121.32; G. S. 62-121.67; G. S. 62-121.34; G. S. 62-121.72.

20 February 1961

STATE BOARDS AND COMMISSIONS; UTILITIES COMMISSION; PUBLIC UTILITIES; WATER COMPANY; ABANDONMENT OR REDUCTION OF SERVICE

A water company is prohibited by G. S. 62-96 from abandoning service without approval of the Utilities Commission and this section may be enforced by injunctive proceedings by the Utilities Commission or customers of the company.

STATE FUNDS

29 July 1960

STATE FUNDS; EXPENDITURE OF STATE FUNDS FOR DUNE REHABILITATION AND SHORE EROSION PREVENTION; SAND FENCES ERECTED ON PRIVATE PROPERTY

The Department of Water Resources under the provisions of G. S. 143-355 may lawfully expend State funds for the erection of sand fences and other temporary barriers on private property along the Outer Banks.

STATE LANDS

4 January 1961

STATE LANDS; SUBMERGED LANDS; OWNERSHIP OF BOTTOMS OF RIVERS AND CREEKS

The State has no title to bottoms of non-navigable waters except in those instances where the abutting land is titled in the State or where the grant out of the State calls for a corner on the bank of a stream rather than the stream itself. A grant of land bounded by non-navigable waters carries title to the land to the middle or thread of the water.

STATE OFFICERS

20 September 1961

STATE OFFICERS; AUTHORITY TO FILL VACANCY IN THE OFFICE OF LIEUTENANT-GOVERNOR OF NORTH CAROLINA

There is no authority under the Constitution or statutes to fill a vacancy in the office of Lieutenant-Governor which occurs during the term.

STATE PROPERTY

5 January 1962

STATE PROPERTY; DIVISION OF PROPERTY BETWEEN ATLANTIC AND NORTH CAROLINA RAILROAD COMPANY AND ATLANTIC COAST LINE RAILROAD COMPANY

The Atlantic and North Carolina Railroad Company is an independent corporation and although controlling stock in the company is owned by the State of North Carolina, its real estate transactions do not require approval by the Governor and Council of State.

STATE TAXES

19 January 1962

STATE TAXES; GENERAL ADMINISTRATION TAX WARRANTS; ENFORCEMENT MORE THAN TEN YEARS AFTER ISSUANCE OF CERTIFICATE OF TAX LIABILITY

Upon the expiration of a ten-year period from the date of the docketing of a certificate of tax liability in favor of the State or the Commissioner of Revenue, the tax indebtedness represented by such certificate abates and no warrant may thereafter be issued by the Commissioner of Revenue under authority contained in G. S. 105-242(a).

TAXATION

1 March 1962

TAXATION; AD VALOREM TAXATION; ASSESSMENT; PARTIALLY COMPLETED STRUCTURES

Partially completed structures are assessable for ad valorem taxation in accordance with the percentage of completion as of January 1, and not in accordance with percentage of use for any particular portion of the year.

23 March 1961

TAXATION; AD VALOREM TAXATION; ASSESSMENT OF REAL PROPERTY IN OTHER THAN REVALUATION YEARS

Where real property of taxpayer was assessed at value placed on same during the last revaluation year, and during such revaluation year the taxpayer had appealed to the County Board of Equalization and Review from the assessment value and did not appeal to the State Board of Assessment from an adverse ruling of the County Board, the value set during the revaluation year is final and conclusive, and the taxpayer is not entitled to raise the question of value again before the County Board in a subsequent year under G. S. 105-279 (3) (h).

Where no appeal from assessment of real property was taken to the County Board of Equalization and Review during a revaluation year, a taxpayer may be heard by the County Board of Equalization and Review in a subsequent year to have his property reassessed at the true value in money under G. S. 105-279 (3) (h) if the property was assessed during the revaluation year at a figure which was manifestly unjust at the time so assessed.

6 March 1962

TAXATION; AD VALOREM TAXATION; ASSESSMENT AND REASSESSMENT OF SUBDIVIDED PROPERTY; REAL PROPERTY

If a tract of land is subdivided since the last revaluation of property and streets have been laid out and opened for travel, the property may be reassessed for taxation, and it is within the discretion of the Tax Supervisor to assess each lot separately, or, if there are more than five acres of lots remaining unsold, to assess such unsold lots as acreage.

17 August 1960

TAXATION; AD VALOREM TAXATION; BANKS; IN LIEU TAXES

The excise tax on banks levied pursuant to G. S. 105-228.11 through 105-228.21 is in lieu of the taxes formerly levied upon the shares of stock of banks under G. S. 105-346 among others.

29 December 1961

TAXATION; AD VALOREM TAXATION; BEER INVENTORIES; VALUATION

Federal and State excise taxes are included in the market value of beer inventories and should not be excluded in arriving at the assessed valuation of the beer for ad valorem tax purposes.

20 March 1962

TAXATION; AD VALOREM TAXES; BOWLING ALLEY EQUIPMENT

Bowling alley equipment used in regular commercial bowling alleys is subject to ad valorem taxation.

23 August 1961

TAXATION; AD VALOREM TAXATION; COLLECTION; CUTTING OFF
DELINQUENT TAXPAYERS' CITY UTILITY SERVICES

Municipal corporations of this State operating utility services have no authority to cut off such services in order to enforce collection of ad valorem taxes.

5 June 1961

TAXATION; AD VALOREM TAXATION; COLLECTION; PARTIAL PAYMENT

A tax collector may accept a partial payment of ad valorem taxes and indicate that it is to be applied toward a particular parcel of real estate without jeopardizing the lien of personal property taxes upon the indicated parcel of real estate.

19 August 1960

TAXATION; AD VALOREM TAXATION; COLLECTION; TRANSFER OF TAX
RECEIPT TO THIRD PARTY "WITH RECOURSE"

There is no authority in the Machinery Act for an ad valorem tax receipt to be transferred to a bank or other party "with recourse", and such transfer could result in the county losing its lien upon the property subject to the tax.

14 February 1962

TAXATION; AD VALOREM TAXATION; CONDEMNATION;
CHANGE IN VALUATION

In condemnation proceedings by the State, the effective ownership passes to the State when it actually assumes control over the property, whether or not the purchase price or the lease payment has been paid or actual condemnation proceedings have been begun. If the State moved in with its machinery and began grading and other work along the proposed right-of-way after January 1, the valuation would remain un-

changed. However, if the State actually assumed control of the property, whether or not actual condemnation proceedings had begun and payment had been made, prior to January 1, the property might be revalued under the provisions of G. S. 105-279(3)d.

12 February 1962

TAXATION; AD VALOREM TAXATION; COTTON WITH "IN-TRANSIT"
RAILROAD RATES; COTTON WASTE

Cotton waste is cotton, and the fact that cotton waste is produced only by the processing of the cotton would indicate that neither the cotton nor the cotton waste is actually in transit. The "in-transit privilege" relates to long or short haul freight rates; and, if there is a contract between the shipper, the taxpayer, and the railroad, it has nothing to do with ad valorem taxation, and, if the cotton has actually come to rest finally in a particular county and is a part of the general goods and chattels of the county, it is subject to taxation.

23 May 1962

TAXATION; AD VALOREM TAXES; COUNTY; NECESSARY EXPENSES;
SPECIAL PURPOSE; COURTHOUSE

The erection of a courthouse is a necessary expense of the county, and taxes levied therefor are for a special purpose authorized by a general act of the General Assembly.

19 February 1962

TAXATION; AD VALOREM TAXATION; EMPLOYMENT OF EXPERT
APPRAISERS; CONTRACT STIPULATING TIME LIMIT FOR
COMPLETION OF WORK

If the completion of a contract of a contracting appraisal company was impeded through no fault of its own, such as flood, windstorm, or other act of God, the county commissioners would be justified in waiving the penalty provision of the contract for not finishing the work within the time stipulated. However, if the delay in the completion of the contract was due to the contractor's fault, such as the failure of the contractor to furnish sufficient personnel to complete the job or failing to work on the job when the weather would permit, the penalty provision should be applied.

22 February 1961

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; BUILDING OWNED
BY A RELIGIOUS ORGANIZATION AND USED BY ART MUSEUM

Building owned by a religious organization and being used by an art museum, is not exempt from ad valorem taxation under G. S. 105-296.

5 June 1962

TAXATION; AD VALOREM TAXATION; EXEMPTION; CIVIL AIR PATROL

Property of a flying club is not exempt from ad valorem taxation; property owned by the State Civil Air Patrol is exempt from ad valorem taxation.

9 March 1962

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; FALLOUT SHELTERS

There is no provision in the North Carolina statutes dealing with ad valorem taxation and exemption from taxation of fallout shelters constructed on the property of private owners.

16 February 1962

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; GROWING TREES

Christmas trees which are on a five-to-eight-year crop rotation basis are not exempt from ad valorem taxation under the provisions of G. S. 105-294, which provides for what is tantamount to an exemption by reason of planting trees for reforestation purposes (for ten years after such planting), but are exempt under subsection (8) of G. S. 105-297, which gives an absolute exemption to all growing crops.

In the case of landowners clear-cutting mature stands of timber-type trees or clearing cutover land and replanting, with a crop rotation period of from fifteen to forty years, the exemption provided under G. S. 105-294 for the "planting of forest trees on vacant land for reforestation purposes, (for ten years after such planting)" would not apply, as the clearing and replanting in this case is not for reforestation purposes, but is for commercial purposes for the raising of pulpwood trees and other trees to be harvested and sold.

If a landowner actually intends to reforest former cropland, the ten-year exemption would apply; but, if he intends to harvest the trees for pulpwood or other purposes as soon as the Soil Bank payments are discontinued, the ten-year exemption would not apply.

1 March 1961

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; LEASED REAL
PROPERTY OCCUPIED BY CHARITABLE HOSPITAL

Real estate leased by the owner to a charitable hospital and used for hospital purposes is, nevertheless, subject to ad valorem taxes.

14 February 1961

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; NONPROFIT CORPORATION OPERATING PRIVATE SWIMMING POOL; PUBLIC SWIMMING POOL OR CIVIC CENTER

Article V, Section 5 of the North Carolina Constitution does not permit, and the General Assembly has not attempted to grant, ad valorem tax exemption to a nonprofit corporation operating a swimming pool for its members only.

Nonprofit corporation operating a swimming pool open to the public and making charges for admission necessary for upkeep only, or a nonprofit corporation formed by three civic clubs to operate a civic center with tennis court available at all times for youth activities and club house open for youth activities three days per week without charge, are not afforded ad valorem tax exemption, unless property of such corporations can qualify for exemption under G. S. 55A-16, formerly G. S. 55-11; G. S. 105-296(9).

22 February 1961

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; PERSONAL PROPERTY; BUSINESS COLLEGES, BEAUTY COLLEGES AND CHARM SCHOOLS PRIVATELY OWNED AND OPERATED FOR PROFIT

Business colleges, beauty colleges and charm schools, even though privately owned and organized and operated for profit, are educational institutions and personal property contained in buildings wholly devoted to educational purposes, belonging to and exclusively used by such educational institutions, is exempt from ad valorem taxation. G. S. 105-297(3).

16 June 1961

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; PERSONAL PROPERTY; EDUCATIONAL INSTITUTION HOUSED IN LEASED PORTION OF BUILDING

The fixtures, books and personal property owned by a private business college are exempt from ad valorem taxes although the college does not occupy the entire building in which its personal property is located.

22 November 1961

TAXATION; AD VALOREM TAXES; EXEMPTIONS; PERSONAL PROPERTY; HOUSEHOLD GOODS

The exemption of household furniture and certain other personal property of a value not exceeding \$300.00 as provided by G. S. 105-297 applies to the true or fair market value of the property and not to the assessed valuation after application of the assessment ratio.

28 February 1961

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; PERSONAL PROPERTY;
IMPORTED MERCHANDISE STORED IN A WAREHOUSE

Merchandise imported from a foreign country, stored in a warehouse in North Carolina, and not acted upon by the importer in such a way as to cause the merchandise to lose its character as an import, is immune to ad valorem taxation under Article I, Section 8, Clause 2 of the United States Constitution.

30 January 1961

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; PERSONAL PROPERTY
OWNED BY EDUCATIONAL INSTITUTION OPERATED FOR PROFIT; REAL
PROPERTY OWNED BY EDUCATIONAL INSTITUTION OPERATED
FOR PROFIT

The real property of a business college organized or operated for profit is not exempt from local ad valorem taxation under subsection (4) of G. S. 105-296, as amended by the 1959 General Assembly. However, the personal property of a business college is exempt from local ad valorem taxation under subsection (3) of G. S. 105-297 when used exclusively for educational purposes, whether or not the business college is operated for profit.

27 March 1961

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; PERSONAL
PROPERTY; POULTRY

For ad valorem tax listing purposes, poultry is regarded as livestock and comes within the \$300 exemption provided by G. S. 105-297(8).

13 July 1960

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; PERSONAL PROPERTY;
PRIVATE BUSINESS COLLEGE WHICH IS NOT A RELIGIOUS SCHOOL

Furniture, furnishings, books and instruments, which are contained in a building wholly devoted to the operation of a private business college for educational purposes and belonging to and exclusively used by such educational institution, are exempt from local personal property taxes under G. S. 105-297(3), and this is true even though the business college is a secular institution.

31 March 1961

TAXATION; AD VALOREM TAXATION; EXEMPTION; PERSONAL PROPERTY;
REAL PROPERTY; HOUSE TRAILERS ON RENTED LAND

Whether a house trailer located on rented land should be regarded as real estate or personal property for ad valorem tax purposes depends largely on the degree to which it is affixed to the land.

31 October 1960

TAXATION; AD VALOREM TAXES; EXEMPTIONS; PERSONAL PROPERTY;
REAL PROPERTY; "LITTLE THEATRE"

Real and personal property belonging to a "Little Theatre" is not exempt from ad valorem taxation.

29 June 1962

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; PERSONAL
PROPERTY; REAL PROPERTY; PRIVATE RECREATION CLUBS

Neither the real nor personal property of a private recreation or social club is exempt from ad valorem taxation.

27 October 1960

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; PERSONAL
PROPERTY; REAL PROPERTY; STATE-OWNED PROPERTY

The State is under no duty to list its real and personal property for taxation.

15 December 1960

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; PERSONAL
PROPERTY; REAL PROPERTY; YMCA

The Raleigh Young Men's Christian Association is a nonprofit institution within the meaning of G. S. 105-296(5) and G. S. 105-297(5), and its real property and personal property, when occupied and used as set forth in said sections, are exempt from local ad valorem taxation. However, since it appears that the Raleigh YMCA is engaged in the rental of rooms to transients in direct competition with commercial hotels and motels, it would be subject to the City privilege license tax levied upon hotels and motels under the City License Tax Ordinance.

2 April 1962

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
CHURCH-OWNED PROPERTY NOT USED FOR RELIGIOUS WORSHIP
OR RESIDENCE OF MINISTER

Real property owned by a group of churches and not being used for religious worship or for the residence of the minister of any such church but, rather, being held for sale, would not be exempt from ad valorem taxation.

2 November 1960

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
CHURCH-OWNED PROPERTY USED AS REST HOME FOR COMPENSATION

Real property belonging to a religious organization but operated as a rest home for paying guests would not be exempt from ad valorem taxation under G. S. 105-206(5) or any other provision of the Machinery Act.

4 April 1962

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
FRATERNAL ORGANIZATIONS

The lodge hall of a fraternal order and the land upon which it stands, together with such additional adjacent land as is necessary for the convenient use of the lodge building, when used exclusively for lodge purposes, is exempt from ad valorem taxation, but adjacent land, although part of the same tract, which is undeveloped and not used for lodge purposes and not necessary for the convenient use of the lodge building, is not exempt.

24 April 1962

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
INCOME-PRODUCING FARM OWNED BY DENOMINATIONAL SCHOOL

An income-producing farm owned by a denominational school and not operated in connection with the school's curriculum is subject to ad valorem taxation.

1 May 1961

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
MOOSE LODGE HALL

If a lodge hall owned by The Loyal Order of the Moose is used exclusively for lodge purposes, the lodge hall and necessary land are exempt from ad valorem taxation under the provisions of subsection (6) of G. S. 105-296.

30 January 1961

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
OWNED BY EDUCATIONAL INSTITUTION OPERATED FOR PROFIT;
PERSONAL PROPERTY OWNED BY EDUCATIONAL INSTITUTION
OPERATED FOR PROFIT

The real property of a business college organized or operated for profit is not exempt from local ad valorem taxation under subsection (4) of G. S. 105-296, as amended by the 1959 General Assembly. However, the personal property of a business college is exempt from local ad valorem taxation under subsection (3) of G. S. 105-297 when used exclusively for educational purposes, whether or not the business college is operated for profit.

31 March 1961

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
PERSONAL PROPERTY; HOUSE TRAILERS ON RENTED LAND

Whether a house trailer located on rented land should be regarded as real estate or personal property for ad valorem tax purposes depends largely on the degree to which it is affixed to the land.

29 June 1962

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
PERSONAL PROPERTY; PRIVATE RECREATION CLUBS

Neither the real nor personal property of a private recreation or social club is exempt from ad valorem taxation.

31 October 1960

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
PERSONAL PROPERTY; PROPERTY OF "LITTLE THEATRE"

Real and personal property belonging to a "Little Theatre" is not exempt from ad valorem taxation.

27 October 1960

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
PERSONAL PROPERTY; STATE-OWNED PROPERTY

The State is under no duty to list its real and personal property for taxation.

15 December 1960

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
PERSONAL PROPERTY; YMCA

The Raleigh Young Men's Christian Association is a nonprofit institution within the meaning of G. S. 105-296(5) and G. S. 105-297(5), and its real property and personal property, when occupied and used as set forth in said sections, are exempt from local ad valorem taxation. However, since it appears that the Raleigh YMCA is engaged in the rental of rooms to transients in direct competition with commercial hotels and motels, it would be subject to the City privilege license tax levied upon hotels and motels under the City License Tax Ordinance.

13 November 1961

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
PRIVATE, RECREATIONAL AND SOCIAL CLUB

Real property owned by a private, recreational or social club and used for its own members' pleasure but occasionally rented to other organizations is not exempt from ad valorem taxation.

5 May 1961

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
PROPERTY ACQUIRED FROM TAX EXEMPT OWNER

Buildings, when acquired by a taxable owner from a tax exempt owner between January 1 and July 1, even though same may be removed from the property at some time after acquisition, retain their character as real estate until severed and would be taxable for ad valorem tax purposes, and the same applies to such items as the bathroom fixtures, since they are affixed to the realty. Electric stoves and items of that nature, however, would not be taxable, since the statute makes only real estate acquired after January 1 and prior to July 1 from a tax exempt owner taxable for ad valorem tax purposes.

30 June 1961

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
PROPERTY HELD BY A MUNICIPALITY FOR RENTAL PURPOSES

Real property held by a municipality for rental purposes is subject to county ad valorem taxation.

30 June 1961

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
PROPERTY LYING PARTLY WITHIN AND PARTLY WITHOUT TOWN LIMITS

In the case of real property lying partly within and partly without the town limits, that portion of the value of the property lying within the town limits, as fixed by the county authorities, is subject to taxation by the town for ad valorem tax purposes.

25 April 1961

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
PROPERTY OF A "SADDLE CLUB"

The property of a private recreation club, although same may be a non-profit organization, is subject to ad valorem taxation.

2 April 1962

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
PROPERTY TO BE HELD BY TRUSTEES FOR A COMMUNITY BUILDING

A community building which is not operated for profit and is for the use of the entire community and not restricted to dues-paying members and their guests would be exempt from ad valorem taxation under subsection (6) of G. S. 105-296.

11 October 1961

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
RENTAL PROPERTY OWNED BY ABC BOARD

A lot owned by a local ABC Board and used for commercial purposes, e.g. a parking lot with rented spaces, is subject to local ad valorem taxes.

2 March 1961

TAXATION; AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
SMALL BUSINESS ADMINISTRATION PROPERTY

The Small Business Administration is an agency of the Federal Government (15 U.S.C.A., § 631 *et seq.*, 1960 Cumulative Annual Pocket Part), and property owned by it is exempt from ad valorem taxation.

21 March 1961

TAXATION; AD VALOREM TAXATION; FORECLOSURE; PARTIES; LIFE
ESTATES; LIFE TENANT JUDGMENT CREDITOR NOT MADE PARTY

The interest of a judgment creditor of a life tenant is not affected by a tax foreclosure action in which he is not made a party.

21 March 1961

TAXATION; AD VALOREM TAXES; FORECLOSURES; RIGHTS OF NON-
ANSWERING JUDGMENT CREDITOR DEFENDANTS

The interest of judgment creditors who are made parties to a tax foreclosure action but fail to answer are cut off by the foreclosure proceeding.

31 March 1961

TAXATION; AD VALOREM TAXATION; FORECLOSURES; STATUTE OF
LIMITATIONS; PARTIES

There is no period of redemption following the delivery of the commissioner's deed in a tax foreclosure proceeding, but if the county or other taxing unit has become the purchaser at the foreclosure sale, such unit may resell the property at private sale to the former owner or other person having an interest in the property for not less than the amount of the taxing unit's claim.

27 April 1961

TAXATION; AD VALOREM TAXES; GARNISHMENT OF SALARIES OF STATE
EMPLOYEES; FEDERAL TAXES; FOREIGN STATE TAXES

The wages of employees of the State of North Carolina are subject to levy for Federal taxes and for taxes due local governments, but agencies of this State should not honor garnishment process issued by our sister states or their political subdivisions upon the wages of State employees.

7 September 1961

TAXATION; AD VALOREM TAXATION; LEVY UPON PERSONAL
PROPERTY; BY WHOM MADE

It is not necessary that a tax levy for the collection of personal property taxes be served by the sheriff, but rather same may be served by the sheriff, the tax collector or any duly appointed deputy collector of the county.

7 December 1960

TAXATION; AD VALOREM TAXES; LIENS; DATE AS OF WHICH LIEN
FOR PERSONAL PROPERTY TAXES ATTACHES

A lien for personal property ad valorem taxes attaches to the realty owned by the same taxpayer as of January 1 and remains a lien against such real property despite the fact that the real property was sold on January 28 of the same year and despite the fact that the real property was not listed for taxation until January 31.

17 November 1961

TAXATION; AD VALOREM TAXATION; LIENS; DELINQUENT TAXES;
CARRY-FORWARD LISTINGS

Under G. S. 105-331, unless the true owner of real property comes in and lists his property for ad valorem taxation, the tax lister or supervisor is authorized to carry forward the property on the tax books and the listing becomes valid and effective, and the tax becomes a lien upon the property even though the property may have changed hands. However, under the provisions of G. S. 105-383, if the vendee of the property had inquired as to taxes due on the property, specifying in whose name said property was listed for taxation for each year, and had been advised by the tax collector that no taxes were due upon the property in question, the vendee would hold the property free of past due taxes.

8 February 1961

TAXATION; AD VALOREM TAXATION; LIENS; PERSONAL PROPERTY TAX;
LIABILITY OF PURCHASER AT FORECLOSURE SALE BEFORE LEVY

Inasmuch as taxes, interest, penalties and costs are a lien on personal property from and after levy or attachment and garnishment of such property under the provisions of G. S. 105-340(b), public sale of personal property on foreclosure of a chattel mortgage thereof, prior to "levy or attachment and garnishment" of ad valorem taxes thereon, passes good title to the property free of the lien for previously assessed ad valorem taxes.

29 August 1960

TAXATION; AD VALOREM TAXATION; LIENS; PERSONAL PROPERTY
TAXES; PRIORITY OF LIEN

The lien of personal property taxes attaches to personalty only from the time of levy; and, if the levy is made against the same property which was assessed for the tax, the tax lien will have priority over a prior recorded mortgage on the same property, but levy must be made before the property has passed from the taxpayer into the hands of a bona fide purchaser for value.

31 October 1960

TAXATION; AD VALOREM; LIENS; PERSONAL PROPERTY; STOCK
OF MERCHANDISE AND FIXTURES

The lien for unpaid ad valorem taxes attaches against personal property only upon levy, except that when a taxpayer goes out of business or sells his stock of merchandise the lien for unpaid ad valorem taxes may attach to the stock of merchandise and fixtures.

7 December 1960

TAXATION; AD VALOREM; LIENS; PERSONAL PROPERTY TAXES UPON
AFTER-ACQUIRED REAL ESTATE

Ad valorem taxes upon personal property becomes liens upon real property owned by the same taxpayer as of January 1 but not upon real property acquired by the taxpayer subsequent to January 1.

21 July 1961

TAXATION; AD VALOREM TAXATION; LIENS; PERSONAL PROPERTY
TAXES UPON REALTY HELD BY THE ENTIRETIES

Taxes upon personal property owned separately by either a husband or wife do not become a lien upon real property owned by the husband and wife as tenants by the entireties.

11 October 1961

TAXATION; AD VALOREM; LIENS; REAL ESTATE; DISCHARGE

Whether taxes have been reduced to tax sale certificates is immaterial with respect to the right of a mortgage holder to pay taxes upon the property upon which he holds a mortgage and exonerate such property from the tax lien. Said mortgage holder may obtain a release of the property in which he is interested upon payment of the taxes due upon that parcel, together with a proportionate part of the personal property, poll and dog taxes owed by the same taxpayer and listed in the same taxing unit.

10 August 1960

TAXATION; AD VALOREM TAXATION; LISTING AND ASSESSING; DATE
AS OF WHICH PROPERTY IS LISTED FOR TAXATION

The Machinery Act, which governs the listing and assessing of property tax, requires that all taxable property be listed for taxation as of January 1, and no other listing date is provided, so that inventories must be listed as of January 1 even though the taxpayer is on a fiscal year basis.

8 June 1961

TAXATION; AD VALOREM TAXATION; LISTING AND ASSESSING;
DISCOVERIES

Section 1109 of the Machinery Act (G. S. 105-331) does not authorize the retroactive reassessment of a tract of real estate because through error or otherwise a less than actual number of acres had been listed for ad valorem tax purposes.

3 May 1961

TAXATION; AD VALOREM TAXATION; LOCAL ASSESSMENT; GAS COM-
PANIES; EXPRESS LINE; ROAD CONSTRUCTION EQUIPMENT; POULTRY

The branch lines of a natural gas corporation used in serving three towns in the county are subject to ad valorem taxation assessment by the county.

Trucks and trailers are required to be listed and assessed for ad valorem taxation in the township in which the owner thereof has its residence, and the residence of a corporation is its principal office in this State, but any of the trucks and trailers which have acquired a business situs elsewhere are to be listed at such other place for ad valorem taxation purposes.

The same is true as to road construction equipment owned by an equipment company doing road construction work in several counties of the State and out of the State.

Broilers are not exempt from ad valorem taxation as "growing crops" under G. S. 105-297(8).

17 August 1961

TAXATION; AD VALOREM; MUNICIPAL TAXATION; MAXIMUM TAX RATE

Municipalities of North Carolina have authority under G. S. 160-402 to levy a tax not in excess of \$1.50 on the \$100.00 valuation to defray the expenses of the municipality.

15 December 1960

TAXATION; AD VALOREM; MUNICIPAL TAXATION; PRIVILEGE LICENSES
TAXES; HOTELS; YMCA SOLICITING TRANSIENT ROOMERS

The Raleigh Young Men's Christian Association is a nonprofit institution within the meaning of G. S. 105-296(5) and G. S. 105-297(5), and its real property and personal property, when occupied and used as set forth in said sections, are exempt from local ad valorem taxation. However, since it appears that the Raleigh YMCA is engaged in the rental of rooms to transients in direct competition with commercial hotels and motels, it would be subject to the City privilege license tax levied upon hotels and motels under the City License Tax Ordinance.

2 February 1962

TAXATION; AD VALOREM; MUNICIPAL TAXATION; REMEDIES AGAINST
PERSONAL PROPERTY; OFFICIAL QUALIFIED TO MAKE LEVY

Under subsection (c) of G. S. 105-385, the governing body of a municipality which has no town policeman may adopt a resolution authorizing the municipal tax collector to direct an execution for municipal ad valorem taxes to the sheriff or any peace officer, including township constables.

25 October 1960

TAXATION; AD VALOREM; MUNICIPAL TAXATION; TAX ZONES ON BASIS
OF MUNICIPAL SERVICES; MUNICIPAL ASSESSMENT POWERS

A municipality may not establish ad valorem tax zones within its borders to correspond with greater or less municipal services in various parts of the municipality.

27 September 1961

TAXATION; AD VALOREM TAXES; NECESSARY EXPENSE; DREDGING;
PUBLIC PURPOSE

Dredging of coastal waterways is not a "necessary" county expense, but unencumbered, nontax funds might be spent by the county for such dredging as the expenditure would be for a public purpose.

23 May 1962

TAXATION; AD VALOREM TAXES; NECESSARY EXPENSES; SPECIAL
PURPOSE; COURTHOUSE

The erection of a courthouse is a necessary expense of the county, and taxes levied therefor are for a special purpose authorized by a general act of the General Assembly.

6 November 1961

TAXATION; AD VALOREM TAXES; NEWLY ANNEXED TERRITORY

Personal property within territory annexed by a municipality under the provisions of G. S. 160-445, effective as of March 7, 1960, would be subject to municipal ad valorem taxes for the fiscal year beginning July 1, 1960, even though the property had been removed from the territory prior to July 1, 1960.

19 September 1960

TAXATION; AD VALOREM TAXATION; NEWLY ANNEXED TERRITORY

Property within a territory annexed to a city in May, 1960, pursuant to Article 36 of Chapter 160 of the General Statutes, is subject to ad valorem taxation by the city for the fiscal year beginning July 1, 1960, and ending June 30, 1961.

9 August 1960

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; CLAIMS
AGAINST DECEDENTS' ESTATES

Personal property taxes assessed against a decedent prior to his death and unpaid at the time of his death are a valid claim against the estate of the decedent.

29 June 1961

TAXATION; AD VALOREM; PERSONAL PROPERTY; PENALTIES AND
INTEREST; REMISSION

Because of the provisions of G. S. 105-403, the penalties and interest due on outstanding personal property ad valorem taxes may not be waived or released by the governing body of a municipality, regardless of whether the taxpayer actually received notice in the mails that the taxes were due.

12 March 1962

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY;
POWER OF TAX SUPERVISOR

County Tax Supervisors are empowered to subpoena any person for examination under oath and to subpoena any books or records whenever he has reasonable grounds for the belief that such person has knowledge of such books or records or that such books or records may contain information which is pertinent to the discovery or the valuation of any property for taxation in the county.

23 November 1960

TAXATION; AD VALOREM; PERSONAL PROPERTY; STATUTE OF
LIMITATIONS

G. S. 105-422 bars all remedies for the collection of ad valorem taxes which have become more than ten years delinquent upon personal property as well as real property in the counties in which the statute is applicable.

12 February 1962

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; TAXABLE
SITUS; AUTOMOBILES USED BY SALESMEN

Automobiles owned by a corporation with its principal business outside of a municipality, but assigned to salesmen who park these automobiles each night at their homes within the municipality, are subject to ad valorem and automobile license taxes within the municipality.

30 March 1962

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; TAXABLE
SITUS; BOATS OWNED BY NORTH CAROLINA RESIDENTS

Boats owned by a resident and citizen of Hyde County but documented in a South American port and currently being operated in South American waters should be listed for taxation in Hyde County in the name of the owner thereof unless the boats have acquired an actual situs elsewhere.

7 February 1961

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; TAXABLE
SITUS; FARM TRUCK STORED IN TOWN; SERVICE STATION VEHICLES

Pickup truck owned by service station operator, with the name of the business painted on the side of the truck, parked at the owner's residence outside of town limits when not in use and driven to place of business within the town each day and used for business purposes there, has not acquired a business situs within the town in which the service station is located for ad valorem tax purposes and must be listed for taxes in the township where the owner resides. G. S. 105-302(a).

The same rule applies to an automobile parked at owner's residence outside of town when not in use, but if the automobile is generally stored at the service station when not in use, then it becomes "situated" where used for business purposes, acquires taxable situs there, and must be listed for taxation there under G. S. 105-302(d).

28 May 1962

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; TAXABLE
SITUS; LPG TANKS; OUTSIDE CORPORATE LIMITS OF TOWN

The taxable situs of LPG tanks, which are placed by the gas company at the homes and places of business of its customers outside of the cor-

porate limits of the town in which the tanks are serviced and in which the company maintains a branch office, would be governed by subsection (d) of G. S. 105-302, and such personal property would be subject to ad valorem taxation by the municipality.

23 February 1961

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; TAXABLE
SITUS; LPG TANKS PLACED ON PERMANENT LOCATION

The taxable situs for LPG tanks placed on permanent location and refilled by pressure equipment at their locations in various parts of the State is governed by subsection (a) of G. S. 105-302 and should be listed for taxation in the township in which the owner has its principal office in this State.

17 November 1960

TAXATION; AD VALOREM; PERSONAL PROPERTY; TAXABLE SITUS;
MEMBERS OF ARMED FORCES

The personal property of an Army Reserve officer living in a county by virtue of military orders and not a domiciliary of the county in the sense that he intends to remain there permanently after his military service has ended would not be subject to local ad valorem taxation if such personal property is not used in a local business enterprise, and the fact that he has bought a house would not of itself alter the situation, although the house and lot would be subject to local ad valorem taxation.

23 May 1962

TAXATION; AD VALOREM; PERSONAL PROPERTY; TAXABLE SITUS;
MOBILE CONSTRUCTION EQUIPMENT

Mobile construction equipment should be listed for ad valorem taxation in the township in which the owner thereof has his residence, unless the owner maintains storage facilities outside of that township where the property is stored and serviced when not in actual use on a job, in which event the taxable situs would be the township wherein the property is so stored and serviced.

23 January 1962

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; TAXABLE
SITUS; TOWN RESIDENT WITH AUTO GARAGED ON PART OF YARD
BEYOND TOWN LIMITS

Where a town resident lives on a lot which extends beyond the town limits and garages her automobile nightly on the part of the lot outside the town limits, the automobile should be listed at the place of residence of the owner within the town limits for ad valorem taxes.

9 September 1960

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; TAXABLE
SITUS; TRACTORS AND TRAILERS OF NORTH CAROLINA RESIDENTS
USED IN HAULING PRODUCE IN SEVERAL STATES

Where persons maintain their families at a place in this State and keep tractors and trailers owned by them parked at such place when not in use and follow the produce season from Florida to Maryland and haul produce to northern and western markets and the tractors and trailers remain for only a short time at the place where the owners and their families reside within this State, the owners are residents of North Carolina and their tractors and trailers and other tangible personal property must be listed for ad valorem taxation in the township where such owners have their residence, and the tractors and trailers are required by the North Carolina Motor Vehicle Laws to be registered and licensed in this State.

23 January 1962

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; TAXABLE
SITUS; TRUCKS OF CORPORATION USED BY SALESMEN OUTSIDE THE
COUNTY PART TIME

Trucks and equipment belonging to a corporation in this State and used by salesmen of said corporation, even though said trucks and equipment may be kept over night at the residence of the salesmen within another taxing unit a part of the time, should be listed for ad valorem taxation in the township in which the corporation has its principal office in this State.

10 February 1961

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; TAXABLE
SITUS; TRUCKS KEPT WITHIN TOWN AND OWNER RESIDING WITHOUT

Where an individual, who lives inside of a certain township but outside the corporate limits of a town located in said township, owns a fleet of transfer trucks and keeps these trucks inside the town at a shop and office located in said town for use in business in conjunction with the shop and office, the fleet of transfer trucks, having acquired taxable situs within the municipality, is subject to ad valorem taxation there. G. S. 105-302(d).

20 February 1962

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; TAXABLE
SITUS; TRUCKS OPERATING IN INTERSTATE COMMERCE

Even though the Supreme Court of the United States has approved the apportionment formula for ad valorem taxation by states and their political subdivisions of trucking equipment used in interstate commerce based upon the ratio of miles traveled in the taxing state to miles traveled

everywhere, the North Carolina statute, being G. S. 105-302, should be followed in listing and assessing such personal property until said statute has been held invalid by a court of competent jurisdiction in an action brought by a party having an interest therein.

31 May 1962

TAXATION; AD VALOREM TAXATION; PERSONAL PROPERTY; TAXABLE
SITUS; TUG BOATS

Tugboats regularly berthed within the corporate limits of a municipality and owned by one who maintains an office in connection therewith in the municipality are subject to municipal ad valorem taxation.

8 June 1961

TAXATION; AD VALOREM TAXATION; REAL PROPERTY; REVALUATION IN
NON-REVALUATION YEARS; CONDEMNED BUILDINGS

A building which has been condemned may be revalued in a non-revaluation year under authority of sub-subdivision d of subdivision (3) of G. S. 105-279, since the property "has increased or decreased in value to the extent of more than one hundred dollars (\$100.00) by virtue of circumstances other than general economic increases or decreases since the last assessment of such property."

23 March 1961

TAXATION; AD VALOREM; REAL PROPERTY; REVALUATION;
NON-REVALUATION YEARS; SUBDIVISIONS

Where a portion of a lot or tract of land is sold subsequent to the last reassessment, the valuation assigned the whole tract should be apportioned between the portion sold and the portion retained.

1 May 1961

TAXATION; AD VALOREM TAXATION; REAL PROPERTY; REVALUATIONS;
OCTENNIAL

The General Assembly of 1959 provided for the octennial revaluation of real estate by the several counties of the State for ad valorem tax purposes. Prior to that, quadrennial revaluation was required.

16 May 1961

TAXATION; AD VALOREM TAXES; REAL PROPERTY; REVALUATION;
PROPERTY CONDEMNED FOR HIGHWAY PURPOSES

Where a right-of-way across a taxpayer's land has been condemned for highway purposes but has not been put into use by the Highway Department by the day as of which property is assessed for taxation, the fact of the condemnation should be taken into account in fixing the assessed valuation of the property.

15 August 1960

TAXATION; AD VALOREM; REAL PROPERTY; SOLD TO CHURCH
AFTER JANUARY 1

A person owning real property as of January 1 is required to list it for ad valorem taxation and to pay ad valorem taxes on same for the year even though part of the property is sold on March 14th of the tax year to a church or other institution whose real property would be exempt from ad valorem taxation under the provisions of G. S. 105-296.

23 November 1960

TAXATION; AD VALOREM TAXATION; REAL PROPERTY; STATUTE
OF LIMITATIONS

G. S. 105-422 bars all remedies for the collection of ad valorem taxes which have become more than ten years delinquent upon personal property as well as real property in the counties in which the statute is applicable.

25 November 1960

TAXATION; AD VALOREM TAXATION; REAL PROPERTY; VACANT LOT
OWNED BY SOLDIER STATIONED IN GERMANY

Vacant lot in North Carolina owned by a serviceman on active duty in Germany is subject to ad valorem taxation.

28 July 1961

TAXATION; AD VALOREM TAXES; REFUNDS; LIMITATIONS

A refund of ad valorem taxes for past years may not be made unless demand for refund is made in writing within two years of the date the tax was due to be paid.

22 May 1961

TAXATION; AD VALOREM TAXATION; SURPLUS REVENUES; DISPOSITION

Surplus cash balances of various funds on hand from ad valorem tax levies at the close of the fiscal year may not be legally transferred to the county's General Fund, but are required to be reflected in the ensuing year's budget.

6 March 1961

TAXATION; AD VALOREM TAXATION; TAX NOTICES; TIME FOR FILING

Tax receipts and stubs may be turned over to the tax collector at any time after the rate has been set and the tax collector has made his annual settlement.

13 July 1961

TAXATION; AD VALOREM TAXES; TENANCY BY THE ENTIRETIES;
PAYMENT BY PERSONAL REPRESENTATIVE OF DECEDENT

Ad valorem taxes on property formerly held by the entireties should be paid by the personal representative of the deceased husband.

20 June 1962

TAXATION; COUNTY; BAD CHECK PENALTY

The 10% bad check penalty provided in G. S. 105-382 is in the nature of an additional tax and constitutes a civil debt to the county just as the original tax. The amount of the penalty, when collected, would constitute funds of the county and not personal funds of the tax collector.

27 December 1961

TAXATION; EXECUTION; TAX WARRANTS; LEVY ON PERSONAL
PROPERTY IN LEGAL CUSTODY

An officer may make a levy upon personal property already in legal custody; however, such levy will be subsequent in priority to any previous levies made upon the same property.

10 October 1961

TAXATION; FEDERAL; DOCUMENTARY STAMP TAX—GOVERNMENTAL
CONVEYANCES

The State or its political subdivisions are not liable for the Federal Documentary Stamp tax on a sale of real estate to or by the State or its political subdivisions, and upon a sale made by the State to the Federal Government, neither the State nor the Federal Government would be liable for said tax. Private grantors to the State or Federal Government are liable for the Federal Documentary Stamp tax, and upon a sale by the State or its political subdivisions to a private party, the Federal Documentary Stamp tax is due from the purchaser.

31 July 1961

TAXATION; FEDERAL; EXCISE TAX ON ADMISSIONS; APPLICABILITY TO
NORTH CAROLINA TRADE FAIR ADMISSION TICKETS

Tickets for admission to the North Carolina Trade Fair to be priced at 50¢ for adults and 25¢ for children will not be subject to the Federal excise tax on admissions imposed by Section 4231 of the Internal Revenue Code of 1954, as amended (26 U.S.C.A., § 4231), which by its terms does not apply to admissions charged in amounts of \$1.00 or less.

24 April 1961

TAXATION; FEDERAL; EXCISE TAX; STATE'S LIABILITY ON
TREAD RUBBER

Sales of tread rubber to the State of North Carolina are not subject to Federal manufacturer's excise tax; sales of recapped tires to or performing recapping service for the State does not constitute "sale" of tread rubber subject to manufacturer's excise tax.

27 April 1961

TAXATION; FEDERAL TAXES; GARNISHMENT OF SALARIES OF STATE
EMPLOYEES; AD VALOREM TAXES; FOREIGN STATE TAXES

The wages of employees of the State of North Carolina are subject to levy for Federal taxes and for taxes due local governments, but agencies of this State should not honor garnishment process issued by our sister states or their political subdivisions upon the wages of State employees.

16 April 1962

TAXATION; FRANCHISE TAX; EXEMPTIONS; RELIGIOUS ORGANIZATIONS

A religious, nonprofit, nonstock corporation organized under the laws of the State of Texas, qualified and doing business in the State of North Carolina, is exempt from franchise tax by G. S. 105-125 and is exempt from North Carolina income tax by G. S. 105-138(3).

11 July 1960

TAXATION; FRANCHISE TAX; LIABILITY OF CORPORATIONS FOR SAME
UPON ISSUANCE OF CHARTER

Where a domestic corporation has done nothing more than procure its charter from the Secretary of State, it is required by G. S. 105-122 to report and pay a franchise tax to the State for the privilege of being incorporated under the laws of this State.

2 February 1962

TAXATION; FRANCHISE TAX; LOAN BY AFFILIATED CORPORATION;
DEDUCTION FOR CREDITOR CORPORATION

Where two affiliated corporations doing business in this State report and pay franchise taxes under G. S. 105-122 and the debtor corporation has added indebtedness owed to or endorsed or guaranteed by its affiliate to its capital stock, surplus and undivided profits, as it is required to do by

G. S. 105-122(b), then the amount of the indebtedness has been included in the tax base (G. S. 105-122(d)) of the debtor corporation, and the creditor corporation is entitled to deduct a like amount in computing its capital stock, surplus and undivided profits.

30 January 1961

TAXATION; GASOLINE TAX; EXEMPTION OF GASOLINE USED IN
PUBLIC SCHOOL TRANSPORTATION

Where a high school owns a ½ ton truck, a carry-all bus and a student activity bus, all of which are used for school purposes, gasoline therefor can be purchased tax exempt from the State contract under the provisions of G. S. 105-149.

10 January 1962

TAXATION; GASOLINE TAX; REFUNDS AND CREDITS; LOSSES
FROM STORAGE TANK LEAKAGE

Under the provisions of G. S. 105-434, a credit or refund may not be allowed for a claimed loss of gasoline sustained by a distributor due to storage tank leakage of undeterminable cause.

16 August 1960

TAXATION; GASOLINE TAXES; SALES OF GASOLINE TO THE NORTH
CAROLINA NATIONAL GUARD; SALES OF GASOLINE TO THE UNITED
STATES FOR THE USE OF THE NORTH CAROLINA NATIONAL GUARD

There is no exemption from the motor fuels tax for gasoline sold to the North Carolina National Guard, but a sale of motor fuels to the United States government for use of the State Guard is an exempt sale under G. S. 105-439.

21 June 1961

TAXATION; GIFT TAXES; EXEMPTIONS; GIFTS TO N. C. STATE BAR

Gifts and contributions to the North Carolina State Bar are deductible for income tax purposes and are exempt from gift taxes, and devises and bequests to the North Carolina State Bar are exempt from estate and inheritance taxes.

27 June 1961

TAXATION; GIFT TAX; TAX DUE ON CONTRIBUTIONS TO SURPLUS
ACCOUNT OF A FAMILY CORPORATION

Where donor made voluntary cash contributions to the surplus account of a corporation in which he owned approximately 80% of the stock, a taxable gift to the corporation resulted to the extent of approximately 20% of the contributions.

25 May 1962

TAXATION; INCOME TAX; DEDUCTIONS; CONTRIBUTIONS TO TRAVEL
COUNCIL OF NORTH CAROLINA, INC.

Contributions, as such, made to the Travel Council of North Carolina, Inc., are not deductible for North Carolina income tax purposes, although payments made by persons and corporations directly interested financially in the encouragement and promotion of the tourist business in North Carolina might deduct such payments if they fall within the classification of ordinary and necessary business expenses.

21 June 1961

TAXATION; INCOME TAXATION; DEDUCTIONS; DONATIONS TO
N. C. STATE BAR

Gifts and contributions to the North Carolina State Bar are deductible for income tax purposes and are exempt from gift taxes, and devises and bequests to the North Carolina State Bar are exempt from estate and inheritance taxes.

6 October 1960

TAXATION; INCOME TAX; DEDUCTIONS; NET ECONOMIC LOSS; TRUSTS;
DISTRIBUTION OF NET INCOME TO BENEFICIARIES AS A DEDUCTION

A trust may not treat a distribution of net income to beneficiaries as a deduction in computing a net economic loss.

27 October 1960

TAXATION; INCOME TAX; NONRESIDENTS; PERSONAL DEDUCTIONS

For State income tax purposes, nonresident individuals are allowed deductions only to the extent that the deductions are connected with income arising from sources within the State.

16 April 1962

TAXATION; INCOME TAX; EXEMPTIONS; RELIGIOUS ORGANIZATION

A religious, nonprofit, nonstock corporation organized under the laws of the State of Texas, qualified and doing business in the State of North Carolina, is exempt from franchise tax by G. S. 105-125 and is exempt from North Carolina income tax by G. S. 105-138(3).

21 December 1961

TAXATION; INCOME TAX; GROSS INCOME; INTEREST PAID ON NATIONAL
CAPITAL HOUSING AUTHORITY BONDS

Interest on National Capital Housing Authority Bonds is exempt from North Carolina income tax by G. S. 105-141 (b) (4).

27 January 1961

TAXATION; INCOME TAXES; TAXABLE GAINS AND LOSSES; EXCHANGES
OF PROPERTY OF LIKE KIND; EXCHANGES OF CORPORATE SHARES
FOR INITIAL SHARES IN MUTUAL INVESTMENT FUND

When stockholders who qualify as initial shareholders in a mutual investment fund transfer to the fund shares they hold in other companies in exchange for shares in the mutual investment fund, the transaction qualifies as a tax-free exchange of property for other property of like kind within the meaning of G. S. 105-145 (a) and as a tax-free exchange within the meaning of G. S. 105-145 (b) (1) and (b) (2).

21 June 1961

TAXATION; INHERITANCE AND ESTATE TAXES; EXEMPTIONS; BEQUESTS
AND DEVISES TO N. C. STATE BAR

Gifts and contributions to the North Carolina State Bar are deductible for income tax purposes and are exempt from gift taxes, and devises and bequests to the North Carolina State Bar are exempt from estate and inheritance taxes.

6 June 1962

TAXATION; INHERITANCE TAXES; GIFTS MADE IN CONTEMPLATION OF
DEATH; DONEE PREDECEASING DONOR; RECURRING TAXES

Where a mother made a gift of corporate stocks to her daughter, the donee predeceased the donor, and the gift is one subject to an inheritance tax under the statutory presumption that it was made in contemplation of death (G. S. 105-2(3)), the recurring taxes credit provided for by G. S. 105-14 is not applicable in computing inheritance taxes due from either estate.

21 September 1960

TAXATION; INHERITANCE TAXES; GROSS ESTATE; INCLUDABILITY OF
ACCIDENTAL DEATH POLICY PROCEEDS

Subject to the exemption contained in Section 2 (d) of the Revenue Act (G. S. 105-3 (4)), the proceeds from an accidental death insurance policy would be includable in the gross estate of a decedent for inheritance tax purposes in the proportion that the decedent paid directly or indirectly the premiums as provided in Section 11-1 (a) of the Revenue Act.

14 July 1961

TAXATION; INHERITANCE TAX; INTER VIVOS GIFT OF REALTY WITH
LIFE ESTATE RESERVED

Where father, six years before his death, made inter vivos transfer of real estate to his daughter by deed of gift, reserving to himself a life estate, the real estate is subject to North Carolina inheritance tax under G. S. 105-2(3); the property is valued as of date of death, or as of the first anniversary of the death of the decedent, upon election of the personal representative, G. S. 105-9.1; if gift tax was paid on the inter vivos transfer, a credit for same would be allowed against any inheritance tax due on the property. G. S. 105-8.

20 December 1961

TAXATION; INHERITANCE TAX; LIFE ESTATE IN PERSONAL PROPERTY,
WITH REMAINDER; MONEY, STOCKS AND BONDS, MUTUAL FUND SHARES

Where a deceased wife, by will, has bequeathed her savings deposits in banks or savings and loan associations, all stocks and bonds, and all mutual fund shares to her husband for life, remainder to her brothers and sisters, the husband takes only a life estate in this property, all of which is nonconsumable personal property.

23 January 1962

TAXATION; INHERITANCE TAX; RECURRING TAXES CREDIT;
COMPUTATION

The inheritance tax recurring taxes credit provided for by G. S. 105-14 is applicable to the share of each "Class A" or "Class B" heir of the present decedent receiving previously taxed property, and the tax credit should be separately computed for each transferee of the present decedent by the application of the formula set forth in the second sentence of G. S. 105-14.

24 April 1961

TAXATION; INHERITANCE TAXES; U. S. GOVERNMENT BONDS; VALUA-
TION WHEN ACCEPTED AT PAR IN PAYMENT OF FEDERAL TAXES

When United States bonds are accepted by the Federal Government at their par value in payment of Federal estate taxes, the bonds should be returned at their par value for State inheritance tax purposes.

1 August 1961

TAXATION; INHERITANCE TAXES; WIDOW'S YEAR'S ALLOWANCE;
BANK DEPOSITS; WAIVER

Where funds on deposit by a deceased person are assigned as a part of the widow's year's allowance, the bank should obtain a waiver from the North Carolina Department of Revenue before releasing any part of the funds so assigned.

12 April 1961

TAXATION; INTANGIBLES TAX; ACCOUNTS RECEIVABLE; APPLIANCE AND
EQUIPMENT DEALERS; "DEALER RESERVE"

No part of the "dealer reserve" held by a finance company engaged in financing appliances, equipment, etc., is deductible by the dealer from accounts receivable for intangibles tax purposes.

26 April 1962

TAXATION; INTANGIBLES TAX; ACCOUNTS RECEIVABLE; DEDUCTIONS;
OUTSTANDING DRAFTS PAYABLE

Under the Intangibles Tax Article of the Revenue Act, outstanding drafts payable are classifiable under G. S. 105-202, dealing with "bonds, notes, demands, claims, and other evidences of debt", and not under G. S. 105-201, dealing with accounts receivable and payable.

22 December 1961

TAXATION; INTANGIBLES TAXES; AWARDS MADE IN CONDEMNATION
PROCEEDINGS; CLERK OF SUPERIOR COURT; MONEY ON DEPOSIT

Deposits made with the clerk of superior court by the State Highway Commission or a local redevelopment commission in condemnation proceedings and held in bank or banks by the clerk are subject to the intangibles tax levied by G. S. 105-199.

21 April 1961

TAXATION; INTANGIBLES TAX; DISTRIBUTION TO CITIES AND COUNTIES;
HOW CITIES AND COUNTIES MAY USE SUCH FUNDS

Intangibles tax distributions to cities and counties must be by the recipients distributed among the various funds in proportion to the various tax levies. If a county has properly constituted special levies for non-necessary expenses, the intangibles tax could be apportioned to such special levies in the proportion that such levies bear to the entire county tax levy; but, if there are no such special non-necessary levies, intangibles tax proceeds, being an ad valorem tax, could not be spent for non-necessary purposes.

29 August 1960

TAXATION; INTANGIBLES TAXES; DISTRIBUTION BY LOCAL
TAXING UNITS

The county's share of the State's distribution of the intangibles tax should be apportioned to all countywide tax purposes according to each rate, whether for general or special purposes, pursuant to G. S. 105-213.

7 December 1960

TAXATION; INTANGIBLES TAXES; EXEMPTIONS; ELECTRIC MEMBERSHIP
AND TELEPHONE MEMBERSHIP CORPORATIONS

An electric membership corporation or a telephone membership corporation organized under Chapter 117 of the General Statutes is not subject to intangibles taxes upon its bank deposits or accounts receivable or other intangibles.

2 December 1960

TAXATION; INTANGIBLES TAX; FUNDS INVESTED IN BUILDING AND
LOAN ASSOCIATIONS; STATUS

Funds invested in out-of-State building and loan associations are subject to State intangibles tax in the same manner and at the same rate of tax as shares of stock under G. S. 105-203.

18 January 1961

TAXATION; LICENSE TAXES; ANTI-FREEZE; SOLD BY STORES

Super-markets, grocery stores, or other stores not classed as service stations are not subject to State privilege license under G. S. 105-89 (Section 153 of the Revenue Act) because of the sale of anti-freeze only which may be used in automobile radiators, if no service is performed by such business establishment in connection with the sale.

23 May 1961

TAXATION; LICENSE TAXES; CHAIN STORE TAX; AFFILIATED
CORPORATIONS OWNED BY SAME INTERESTS

Wholesale sales made by a parent "warehouse" corporation to its several subsidiary retail drug corporations for resale are subject to the wholesale rate of tax for State sales tax purposes. Further, the branches and subsidiaries of the parent corporation, all of the stores having similar names and owned and controlled by the same interests, constitute chain stores within the purview of G. S. 105-98 and are subject to the chain store privilege license tax levied by that section.

4 August 1960

TAXATION; LICENSE TAXES; COUNTY GO-CAR RACE TRACK

North Carolina counties are authorized to levy a license tax on the operation of a go-car race track under the provisions of G. S. 105-66(b), not in excess of the amount of tax levied by the State of North Carolina upon the same activity.

7 May 1962

TAXATION; LICENSE TAXES; COUNTY TAXATION; LAUNDRIES
LOCATED WITHIN THE COUNTY

Since counties have no general taxing powers and since G. S. 160-56 contains no provision for the taxation by counties of laundries and linen supply services whose plants are located within the county, a county may not levy a privilege license tax upon such laundries and linen supply services whose plants are located therein.

16 August 1961

TAXATION; LICENSE TAXES; MOTOR ADVERTISERS; ICE CREAM
VENDORS WITH SOUND EQUIPPED TRUCKS

A person who sells ice cream and ice milk products from a truck which is equipped with an amplifying sound device for playing advertising jingles is a motor advertiser within the meaning of Section 151½ of the Revenue Act.

13 February 1962

TAXATION; LICENSE TAX; MUNICIPAL TAXATION; AUTOMOTIVE
EQUIPMENT; SUPPLY DEALERS

Under a municipal ordinance adopted by the governing body under Article II, Schedule B, of the North Carolina Revenue Act, levying a privilege license tax on "automotive equipment and supply dealers at wholesale" and on "foundry and machine shops", the municipality may levy only the wholesale automotive equipment and supply dealer's license in a situation where a person operates within the same building under the same roof with a common entrance a wholesale automotive parts business and a machine shop, the business of the machine shop operation consisting only of the repair of automobile and boat motors, with no "foundry" work actually being done.

13 June 1962

TAXATION; LICENSE TAX; MUNICIPAL TAXATION; AUTOMOTIVE
SERVICE STATIONS

A municipality may levy a privilege license tax upon automotive service stations as defined in G. S. 105-89 not in excess of one-fourth of that levied by the State when based upon the population of the municipality or a tax equal to \$1.25 per pump, whichever is greater.

24 May 1962

TAXATION; LICENSE TAX; MUNICIPAL TAXATION; CHAIN STORES

A municipality may levy a privilege license tax upon chain stores within the municipality under its general taxing power granted by G. S. 160-56, subject to the limitation imposed by G. S. 105-98.

8 August 1961

TAXATION; LICENSE TAX; MUNICIPAL TAXATION; EXPRESS COMPANY
WITH OFFICE OUTSIDE TOWN LIMITS

If an express company is "doing business" within the municipality, the municipality may levy a license tax upon such company by a properly drawn ordinance, even though the office of the express company is outside the municipality.

14 October 1960

TAXATION; LICENSE TAX; MUNICIPAL TAXATION; MERCHANTS AND
CHAIN STORE TAX; LIABILITY FOR BOTH

If a municipality's taxing ordinance is so drawn, it might levy and collect from the same company both a merchant's tax and a chain store tax.

11 September 1961

TAXATION; LICENSE TAXES; MUNICIPAL TAXATION; PEDDLERS;
PRODUCTS OF THE DAIRY; ICE MILK

A municipality may not exact a peddler's privilege license tax from peddlers of ice milk or other products of the dairy under G. S. 105-53.

29 May 1961

TAXATION; LICENSE TAXES; MUNICIPAL; PULPWOOD BUYER

Under the general taxing power granted municipalities by G. S. 160-56, a municipality, by a properly drawn taxing ordinance, may levy a privilege license tax upon a pulpwood buyer engaged in the business of buying pulpwood within the town limits.

23 October 1961

TAXATION; LICENSE TAX; MUNICIPAL; REFUNDS

A municipality is barred from making refunds of privilege license taxes for more than two years from the date such privilege license taxes were due to be paid, although the taxes sought to be recovered were paid through clerical error or were illegally levied and collected.

3 August 1960

TAXATION; LICENSE TAXES; POPULATION; OFFICIAL CENSUS

Until the 1960 Federal decennial census has been made official, privilege license taxes based upon population of the municipality in which the business or occupation is carried on are governed by the 1950 official census.

3 May 1962

TAXATION; LICENSE TAXES; VENDING MACHINES; OPERATION BY
CREDIT UNIONS

A credit union operating five or more 5¢ food vending machines within the manufacturing plant of its sponsor is liable for the \$150.00 operator's license levied under G. S. 105-65.1 instead of the per dispenser license on each such vending machine levied under that section. Further, if said credit union engages in the sale of bottled drinks and tobacco products, privilege licenses would also be due for the sale of such merchandise.

17 March 1961

TAXATION; REVALUATION OF REAL PROPERTY; HORIZONTAL ADJUST-
MENT OF APPRAISAL VALUES; EARLY REVALUATION PURSUANT TO
RESOLUTION BY BOARD OF COUNTY COMMISSIONERS

Where real property has been listed for 1961 taxes at values fixed by revaluation conducted in 1957 and the next revaluation year for such county, under G. S. 105-278, is 1966, the county board of commissioners may not now effect horizontal increases in the assessment value of all woodland in the county.

Under G. S. 105-278, any county desiring to conduct an earlier revaluation of all real property than is provided for by the octennial revaluation schedule set forth in that statute may do so by the adoption of a resolution so providing, copy of same to be sent forthwith to the State Board of Assessment.

20 March 1961

TAXATION; SALES AND USE TAX; EXEMPTIONS; EDUCATIONAL INSTITU-
TIONS; RENTALS OF EQUIPMENT BY EDUCATIONAL INSTITUTION
CONTRACTORS

Tools purchased by educational institution contractors and equipment leased by such contractors to be used in the construction of educational institutions are not "building materials" within the meaning of G. S. 105-164.13(31); and, in applying the rule of strict construction to statutes granting exemptions, such sales and rentals do not qualify for the sales tax exemption provided for by said section.

27 February 1961

TAXATION; SALES TAX; EXEMPTIONS; EXEMPTION CERTIFICATES;
SALES TO LOCAL GOVERNMENTAL CONTRACTORS

Under the exemption provided by subsection (30) of G. S. 105-164.13 on sales of building materials to contractors to be used in construction work for State or local governments, sales tax exemption certificates are not required for such governmental contractors.

25 July 1961

TAXATION; SALES AND USE TAX; EXEMPTIONS; HOUSING AUTHORITIES

Under the Sales and Use Tax Article, as amended by the 1961 General Assembly, housing authorities organized under Chapter 157 of the General Statutes are not exempt from the payment of sales tax and would not be entitled to a refund of any sales or use taxes under the provisions of G. S. 105-164.14, as amended.

24 January 1962

TAXATION; SALES TAX; EXEMPTIONS; INSECTICIDES; HERBICIDES
NOT EXEMPT

Sales of herbicides and fungicides are not exempt from the North Carolina sales and use tax.

15 September 1961

TAXATION; SALES AND USE TAXES; EXEMPTIONS; PLANT DEFOLIANTS

Sales of plant defoliant are not exempt from the North Carolina sales and use tax.

21 February 1961

TAXATION; SALES TAX; EXEMPTIONS; SALES TO CONTRACTOR FOR
LIBRARY BUILDING; AGENCY OF MUNICIPALITY AND COUNTY

Sales of tangible personal property to a contractor to be used in constructing an addition to a library which appears to be an agency of a municipality, would be deemed to be direct sales to local government units of the State and would, therefore, be exempt from State sales tax under G. S. 105-164.13(30).

19 July 1960

TAXATION; SALES TAX; EXEMPTIONS; WHOLESALE TAX; OYSTER SHELLS
AND GRIT AS POULTRY FEED

Oyster shells constitute a poultry feed within the meaning of G. S. 105-164.5(a) (2) and as such are exempt from the wholesale, retail sales and use taxes. Grit, although used in a regular poultry feeding operation, is not a feed within the meaning of G. S. 105-164.5(a) (2) or G. S. 105-164.13(2) and is not, therefore, exempt from the provisions of the wholesale, retail sales or use taxes.

17 July 1961

TAXATION; SALES AND USE TAXES; LAUNDRIES AND DRY CLEANERS;
RUG CLEANERS

In the case of a laundry and dry cleaning establishment which cleans rugs both in its own establishment and on location in the homes and offices

of the owners, the three per cent sales tax should be charged and remitted on its entire receipts from such rug cleaning operations under the Sales and Use Tax Law, as amended by the 1961 General Assembly, whether such work is performed on location or in the plant.

4 June 1962

TAXATION; SALES AND USE TAXES; LAUNDRIES, DRY CLEANERS, ETC.;
SOUTH CAROLINA GARMENTS CLEANED IN NORTH CAROLINA; SOLICITING
IN NORTH CAROLINA FOR SOUTH CAROLINA FIRM

The gross receipts tax levied under G. S. 105-164.4(4) is applicable to a North Carolina dry cleaning firm, and it is immaterial that the North Carolina firm cleans some garments picked up in South Carolina from residents of that State. The same statute imposes a gross receipts tax on persons or firms engaging in the business of soliciting laundry, dry cleaning and linen rental business in North Carolina for another firm without regard to the fact that the solicitor might live in South Carolina or that the garments might be cleaned in South Carolina.

25 August 1961

TAXATION; SALES AND USE TAXES; REFUND TO COUNTIES AND
INCORPORATED CITIES AND TOWNS

The Commissioner of Revenue is not authorized to make refunds of sales and use taxes paid by county or city administrative units of the public school system in conjunction with their purchases of tangible personal property. G. S. 105-164.14(2) and (3).

8 September 1961

TAXATION; SALES AND USE TAXES; REFUNDS TO RESEARCH TRIANGLE
REGIONAL PLANNING COMMISSION NOT AUTHORIZED

The Revenue Act does not authorize the Commissioner to make refunds to the Research Triangle Regional Planning Commission of sales and use taxes paid by the Commission on its purchase of tangible personal property.

25 January 1961

TAXATION; SALES AND USE TAX; SALES PRICE; TRADE-IN OR TURN-IN
SALES; TAX ON RECAPPED TIRES RECEIVED ON TRADE-IN

"Sales Price" for purposes of the retail sales and use tax includes amounts credited for trade-in as well as consideration other than monetary, so that when a new tire dealer sells a new tire for \$33.00 or for \$30.00 plus a recappable tire the sales price, subject to the retail sales and use tax, is \$33.00 in either case.

When a tire dealer recaps tires taken in trade and sells them, the total sales price, including any amount credited for trade-in, is subject to the sales and use tax.

19 July 1960

**TAXATION; SALES TAX; WHOLESALE TAX; EXEMPTIONS; OYSTER SHELLS
AND GRIT AS POULTRY FEED**

Oyster shells constitute a poultry feed within the meaning of G. S. 105-164.5(a) (2) and as such are exempt from the wholesale, retail sales and use taxes. Grit, although used in a regular poultry feeding operation, is not a feed within the meaning of G. S. 105-164.5(a) (2) or G. S. 105-164.13(2) and is not, therefore, exempt from the provisions of the whole-sale, retail sales or use taxes.

23 May 1961

**TAXATION; SALES TAX; WHOLESALE TAX; SALES BY PARENT
CORPORATION TO SUBSIDIARY FOR RESALE**

Wholesale sales made by a parent "warehouse" corporation to its several subsidiary retail drug corporations for resale are subject to the wholesale rate of tax for State sales tax purposes. Further, the branches and subsidiaries of the parent corporation, all of the stores having similar names and owned and controlled by the same interests, constitute chain stores within the purview of G. S. 105-98 and are subject to the chain store privilege license tax levied by that section.

12 January 1962

**TAXATION; STATE TAXES; GENERAL ADMINISTRATION TAX WARRANTS;
ENFORCEMENT MORE THAN TEN YEARS AFTER ISSUANCE OF
CERTIFICATE OF TAX LIABILITY**

Upon the expiration of a ten-year period from the date of the docketing of a certificate of tax liability in favor of the State or the Commissioner of Revenue, the tax indebtedness represented by such certificate abates and no warrant may thereafter be issued by the Commissioner of Revenue under authority contained in G. S. 105-242(a).

TEACHERS

8 August 1960

TEACHERS; TEACHERS' CONTRACTS

No election of a teacher is valid until the same is approved by the county superintendent and the county board of education. G. S. 115-72.

UNIVERSITY OF NORTH CAROLINA

21 February 1961

UNIVERSITY OF NORTH CAROLINA; ESCHEATED REAL PROPERTY; MANNER OF CONVEYANCE

The University of North Carolina may convey escheated real property by Commissioner's deed where the sale of such property is a part of a court proceeding declaring the property escheated.

10 November 1961

UNIVERSITY OF NORTH CAROLINA; PURCHASE OF COMPREHENSIVE GENERAL LIABILITY INSURANCE

The University of North Carolina does not have authority to buy comprehensive general liability insurance with State-appropriated funds.

20 December 1960

UNIVERSITY OF NORTH CAROLINA; TORT CLAIMS ACT; STATE INSTITU- TIONS; LIABILITY OF UNIVERSITY FOR ACTS OF STUDENTS

A medical student, working under the supervision of a professor, is not an employee of the State within the purview of the State Tort Claims Act, there being no employer-employee relationship. *FLOYD v. NORTH CAROLINA STATE HIGHWAY COMMISSION*, 241 N. C. 461 (1955), and *ALLIANCE COMPANY v. STATE HOSPITAL AT BUTNER*, 241 N. C., 329 (1955).

8 May 1961

UNIVERSITY OF NORTH CAROLINA; TORT CLAIMS ACT; TORT LIABILITY OF UNIVERSITY FACULTY MEMBERS AND DENTAL STUDENTS; PROCUREMENT OF LIABILITY INSURANCE

A dental student at the University of North Carolina, receiving no benefits or salary from the University, is not an employee of the University within the meaning of the State Tort Claims Act, and a negligent act, the origin of which developed solely from said student's own volition, would not result in liability on the University under the Tort Claims Act. However, an act done by a student, at the direction and under the control of a faculty member, may result in liability on the University under the Tort Claims Act.

As long as no public funds are used, there is no objection to dental students and faculty members obtaining individual liability policies under a blanket coverage.

UTILITIES

20 February 1961

UTILITIES; PUBLIC UTILITIES; WATER COMPANY; ABANDONMENT OR REDUCTION OF SERVICE

A water company is prohibited by G. S. 62-96 from abandoning service without approval of the Utilities Commission and this section may be enforced by injunctive proceedings by the Utilities Commission or customers of the company.

VITAL STATISTICS

26 May 1961

VITAL STATISTICS; BIRTH CERTIFICATES; AMENDMENT OF BIRTH CERTIFICATE

When a man marries the mother of his child, the birth certificate may be appropriately amended.

7 February 1962

VITAL STATISTICS; BIRTH CERTIFICATES; CHILD BORN WITHIN 280 DAYS OF DIVORCE

If a child is born within 280 days of the time the mother secures a divorce, the mother's husband should be listed on the birth certificate as the father unless a court order has specifically shown some other person to be the father. The mere fact that a divorce is obtained on the basis of two years' separation is not sufficient grounds for omitting the husband's name as the father.

WATER RESOURCES DEPARTMENT

29 July 1960

WATER RESOURCES DEPARTMENT; EXPENDITURE OF STATE FUNDS FOR DUNE REHABILITATION AND SHORE EROSION PREVENTION; SAND FENCES ERECTED ON PRIVATE PROPERTY

It is the opinion of the Office of Attorney General that the Department of Water Resources under the provisions of G. S. 143-355 may lawfully expend State funds for the erection of sand fences and other temporary barriers on private property along the Outer Banks.

WEAPONS

27 January 1961

WEAPONS; CONCEALED; ON PERSON; GLOVE COMPARTMENT OF CAR

A person may not carry a pistol concealed about his person. Carrying a pistol in the glove compartment of an automobile would be violative of the laws of this State. If the pistol is carried openly and in plain view of any person who might look into the automobile, there would be no violation of the laws of this State.

There is no provision under the laws of this State for a person to secure a permit to carry a pistol concealed about his person.

22 January 1962

WEAPONS; CONCEALED WEAPONS; PRISON OFFICERS OFF DUTY

It would be unlawful for a State Prison guard to carry a concealed weapon when not on duty.

16 April 1962

WEAPONS; FIREARMS; PERMIT NECESSARY TO PURCHASE PISTOL

In North Carolina a permit must be secured in order to purchase a pistol, in some counties from the clerk of the superior court and in the others from the sheriff.

23 August 1960

WEAPONS; FIREARMS; REQUIREMENTS FOR OBTAINING PISTOL PERMITS; PERMIT ISSUED BY SHERIFF

G. S. 14-403 and G. S. 14-404 were amended by the 1959 General Assembly, making it the duty of the sheriff of the county to issue license or permit for weapons for the defense of a person's home. The sheriff may require affidavits in order to satisfy himself as to the good moral character of the applicant.

2 November 1960

WEAPONS; SALES GENERALLY AND TO MINORS; ALLOWING POSSESSION OF FIREARMS TO MINORS

There is no statute regulating the sale of shot guns, rifles and cartridges to minors in the State of North Carolina.

3 August 1960

WEAPONS; SALE OF .22 CALIBER TARGET PISTOLS, PUMP-GUNS,
AND KNIVES

A pocketknife and a switch-blade knife are not weapons within the meaning of G. S. 14-402, which prohibits the sale of certain weapons without a permit. A .22 caliber target pistol is considered a pistol within the meaning of this statute.

WELFARE

9 October 1961

WELFARE; ADOPTION; CONSENT OF HUSBAND DURING SEPARATION
PENDING DIVORCE

Adoption consent of husband to adoption of a child born to his wife during wedlock, but after approximately one year of separation, is necessary due to the presumption of legitimacy of such child, unless there be a positive showing of husband's non-access or impotence.

29 November 1960

WELFARE; OLD AGE ASSISTANCE LIEN; RELEASE OF PROPERTY FROM
EFFECT OF LIEN

Under the provisions of G. S. 108-30.2 the County Attorney may, in his discretion, have a deceased recipient's property appraised, advise the heirs or other interested relatives of the appraised value of the property, accept as payment against the old age assistance lien the appraised value, and release the particular piece of property from the effect of the lien.

28 February 1961

WELFARE; STATE BOARD OF PUBLIC WELFARE; AID TO DEPENDENT
CHILDREN OF UNEMPLOYED PARENTS

The provisions of Part 2, entitled "Aid to Dependent Children", of Article 3 of Chapter 108 of the General Statutes examined in conjunction with the proposed 1961 amendment to the Federal Social Security Act are not broad enough to give to the State Board of Public Welfare the authority to establish a program for aid to dependent children of unemployed parents and to provide for State and local financial participation.

20 June 1961

WELFARE; STATE BOARD OF PUBLIC WELFARE; LICENSING OF
BOARDING HOUSES FOR HOMELESS MEN BY BOARD

The operation by a non-profit corporation of boarding houses for homeless men does not come within the provisions of G. S. 122-72 and the boarding houses are not subject to the control and licensing authority of the State Board of Public Welfare.

18 September 1961

WELFARE; STATE BOARD OF PUBLIC WELFARE; LICENSING OF HOMES
FOR THE AGED; LICENSING OF A UNIT AS A HOME FOR THE AGED IN A
FACILITY LICENSED BY THE STATE BOARD OF HEALTH
AS A NURSING HOME

Under the provisions of Chapter 51 of the 1961 Session Laws exclusive authority is given to the State Board of Health to license nursing homes, whereas the State Board of Public Welfare retains its authority and responsibility for licensing of homes for the aged. An operator under this chapter would have to choose which type of facility he desired to operate and then obtain a license from the proper State Agency. Only in cases which existed prior to the 1961 amendment where an operator is leasing a facility from the county and is under legal obligation to the county to provide both a home for the aged and a facility where aged individuals could receive skilled nursing care would it be permissible for one completely segregated unit to be licensed by the State Board of Health as a nursing home for aged individuals and the other unit licensed by the State Board of Public Welfare as a home for the aged.

10 October 1960

WELFARE; STATE BOARD OF PUBLIC WELFARE; MEDICAL
ASSISTANCE FOR THE AGED

The provisions of Part 1, entitled "Old Age Assistance," of Article 3 of Chapter 108 of the General Statutes do not provide adequate authority to the State Board of Public Welfare for the establishment of a program for Medical Assistance for the Aged or to meet the new requirements of Federal law applicable only to this program under the Social Security amendments of 1960.

WILLS AND ADMINISTRATION

13 February 1961

WILLS; ESTATES; DECEDENTS; DISSENTS FROM WILLS;
RIGHT TO DISSENT

The language of G. S. 30-1(b) which provides in effect that a surviving spouse may not dissent from the will of a deceased spouse if he or she

receives one-half or more the value of all property passing upon the death of the testator contemplates that the "one-half or more in value of all the property passing upon the death of the testator" shall be computed without regard to debts, costs of administration, or taxes.

20 July 1961

WILLS; ESTATES; INTESTATE SUCCESSION; DISSENTS FROM WILLS;
ELECTION TO TAKE LIFE INTEREST IN LIEU OF INTESTATE SHARE

In case of election to take a life interest in lieu of an intestate share, G. S. 29-30(d) (e) and (f) spell out the procedure for a jury to allot the life interest. The jury must allot the same in conformity with G. S. 29-30(a) and (b) and include therein the lands upon which the house and outbuildings are "situated and reasonably necessary to the use and enjoyment thereof."

If either the widow or any other person interested in the estate objects to the allotment by the jury, they can object and appeal as in the partition proceeding. G. S. 29-30(f); G. S. 46-1 *et seq.*

The jury allotting the life interest contemplated by G. S. 29-30 is not required to make any findings of fact as such, but only to allot the life estate according to G. S. 29-30(a) and (b) and report the same as provided by G. S. 29-30(d) and (e).

12 December 1961

WILLS; PROBATE OF CODICIL WHERE WILL IS DESTROYED

A codicil to a will must be probated even though the will be missing and presumed destroyed, where the testamentary provisions of the codicil are not dependent upon the provisions of the will for their effectiveness.

WORKMEN'S COMPENSATION

15 December 1960

WORKMEN'S COMPENSATION; CIVIL DEFENSE; VOLUNTEERS;
EMPLOYER-EMPLOYEE

A person volunteering his services to Civil Defense is not an employee of the respective Civil Defense Agency within the meaning of the Workmen's Compensation Act, the essential prerequisite, the relationship of employer-employee, being absent.

18 November 1960

WORKMEN'S COMPENSATION; CIVIL DEFENSE; WORKERS ASSISTING
LOCAL POLICE IN NORMAL TIMES; DEPUTY SHERIFFS

A civil defense worker is not doing civil defense work when he is assisting in administrative police duties. Civil defense commences only in time of emergency and disaster. A city has no authority to use civil de-

fense workers in their capacity as civil defense workers to enforce local law in normal times. A civil defense worker may consent to be sworn as a deputy sheriff but at such time becomes an employee of the county or governing body but only during the period in which he is actually working in a deputy sheriff's capacity. As a deputy sheriff he is subject to the statutory provisions governing sheriffs and as an employee of the county or governing body he falls within the purview of the Workmen's Compensation Act. G. S. 166; G. S. 162-1 *et seq.*; G. S. 97-2(2).

3 November 1960

WORKMEN'S COMPENSATION; CITY POLICE OFFICERS; INJURIES
SUSTAINED BEYOND JURISDICTIONAL LIMITS

A city policeman, while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality while acting pursuant to authorization or instruction from any superior officer falls within the purview of the Workmen's Compensation Act. G. S. 97-2(2).

4 April 1961

WORKMEN'S COMPENSATION; FIREMEN; COVERAGE FOR FIREMEN
EITHER PAID OR VOLUNTARY, TOWN OR RURAL

Firemen are covered by workmen's compensation, i.e., either volunteer or paid when said firemen is a member of a unit set up or created under the provisions of Chapter 69 Article 3; 69 Article 3A or Chapter 153-9 subsection 39 of the General Statutes of North Carolina.

Firemen or voluntary firemen belonging to organized fire protection groups totally self-supporting and having no governmental sanction or approval either express or implied would not be covered by workmen's compensation unless the same is provided by the group itself or the group is organized in such manner as to bring it under the provisions of Chapter 97 (Workmen's Compensation Act) of the General Statutes of North Carolina.

In case of disabling injury to a volunteer fireman under compensable circumstances, compensation payable shall be calculated upon the average weekly wage the volunteer fireman was earning in the employment wherein he principally earned his livelihood as of the date of injury.

26 October 1960

WORKMEN'S COMPENSATION; FIREMEN; VOLUNTEER; LIABILITY OF
COUNTIES

It is not mandatory that County Commissioners take workmen's compensation insurance on county employees. Counties and county employees are subject to the provisions of the Workmen's Compensation Act, and under G. S. 97-7 do not have the right to reject the provisions of the Act relative to payment and acceptance of compensation. However, that

section also authorizes a county to either self-insure or purchase insurance to secure its liability for compensation. Accordingly, whether a county will elect to qualify as a self-insurer or to purchase liability insurance is a matter in the discretion of the County Commissioners.

Volunteer firemen operating a fire truck purchased by a county are covered by the Workmen's Compensation Act.

6 July 1961

**WORKMEN'S COMPENSATION; LIABILITY OF CITY FOR PERSONAL
INJURIES TO DEPUTIZED POLICEMAN AIDING IN ARREST**

A person duly and legally deputized by an officer to assist in an arrest, as required in G. S. 15-45, is an employee of the governing body for which the deputizing officer is employed, for purposes of workmen's compensation.

12 August 1960

**WORKMEN'S COMPENSATION; NURSE OR DOMESTIC PAID
THROUGH WORKMEN'S COMPENSATION**

Pursuant to G. S. 97-40.1, in cases of certain types of extremely serious and disabling injuries, workmen's compensation payments are made to pay the salary of a domestic worker or nurse to care for the injured worker. The right to hire, fire, and supervise the performance of duties by the domestic worker or nurse rests with the worker and not with the Industrial Commission. Therefore, such a person is not a State employee.

28 November 1960

**WORKMEN'S COMPENSATION; PRISONERS; COUNTY JAILS; PRISONERS
SENTENCED TO WORK ON COUNTY PROPERTIES**

A county is not liable under Workmen's Compensation for disability resulting from injuries sustained by a person working for the county under a sentence assigning him directly to the county jail, rather than the State Prison System. G. S. 148-32 and G. S. 97-13(c).

8 May 1961

WORKMEN'S COMPENSATION; STUDENT NURSES; VOLUNTEER WORKERS

Student nurses may be considered employees of the school in which they are enrolled within the meaning of the North Carolina Workmen's Compensation Act though no money wages are paid, it being the general rule that the element of payment to satisfy the requirement of a contract of hire need not be in money, but may be in anything of value such as room, board and training furnished to said nurses.

Civic-minded persons, volunteering their services to various charitable hospitals are not considered employees within the meaning of the North

Carolina Workmen's Compensation Act. There must be some legal duty to perform services such as an appointment or contract. Something more than voluntary service is required such as remuneration, control or supervision by some person acting in an authoritative position.

ZONING

25 October 1961

ZONING; EFFECT ON RESTRICTIVE COVENANTS

The action of a municipality in rezoning property within the geographical limits of its authority is independent of any restrictive covenants placed upon the property by individual citizens. Both the zoning regulations and the restrictive covenants would on their face be effective.

11 August 1961

ZONING; EXTRATERRITORIAL ZONING; ASSESSMENT OF STREET AND SIDEWALK IMPROVEMENTS

Under G. S. 160-182.2, a municipality may zone property on the opposite side of a river if within the one-mile limitation.

Under G. S. 160-81, an abutting property owner may be assessed for sidewalk and street improvements if a petition is filed as required. Unless there is a petition, statute or charter provision, an abutting property owner may not be assessed for sidewalk and street improvements.

14 April 1961

ZONING; ORDINANCE; BOARD OF ADJUSTMENT INACTIVE; FUNCTIONS OF BOARD OF ALDERMEN

The Board of Aldermen cannot take over the functions or perform the duties of a board of adjustment, it being a legislative body rather than a quasi judicial body.

26 April 1961

ZONING; ORDINANCES; DOING BUSINESS IN RESIDENTIAL ZONE

A private ambulance service is not doing business, or has not established a place of business, in a residential-zone area when one of the drivers takes the ambulance to his home at night and has telephone connections to the place of business for the purpose of answering night calls. If, however, a person operates an ambulance service from his home and has additional facilities, such as outbuildings, signs, garage, extra lights, etc., he can very well be operating a place of business in a residential zone.

21 March 1962

ZONING; NEIGHBORHOOD BUSINESS DISTRICT

Automobile repairing is not a use "customarily and necessarily incident" to use of land for "automobile sales lots". Specific prohibition of use for automobile repair garages takes precedence over a general grant of authority to use for "customary and necessary purposes" connected with automobile sales, and use for such repair garages is not a necessary or customary function of automobile sales lots.

19 June 1962

ZONING; ORDINANCES; SPOT ZONING

As a general rule a zoning ordinance of a municipality is valid if it emanates from powers granted by the Legislature to the municipality, if it has a reasonable tendency to promote the public safety, health, morals, comfort, welfare and prosperity of the community, and if its provisions are not arbitrary; unreasonable or confiscatory.

Where a municipality rezones a portion of a city block from residential to manufacturing, and the question of "spot zoning" arises, the basic rule to determine the validity of the amending ordinance is the same rule used to determine the validity of the original ordinance: The governing board must act in good faith. It cannot act arbitrarily or capriciously. If the conditions existing at the time of the proposed change are such as would have originally justified the proposed action, the governing board has the power to act. *WALKER v. ELKIN*, 254 N. C. 85; *HELMS v. CHARLOTTE*, 255 N. C. 647.

NORTH CAROLINA
STATE BUREAU OF INVESTIGATION
DEPARTMENT OF JUSTICE
RALEIGH

WALTER F. ANDERSON
Director

P. O. Box 2828

JANUARY 23, 1963

Honorable T. Wade Bruton
Attorney General of North Carolina
Raleigh, North Carolina

Dear Attorney General Bruton:

Submitted herewith is the Biennial Report for the State Bureau of Investigation covering the Fiscal Years 1960-61 and 1961-62.

During the past biennium the Bureau was able to comply with requests made for our services in 4,995 cases. In addition to the investigative work completed for the requesting agencies, our crime laboratory made 66,735 examinations of evidence and materials submitted to the Bureau. In addition to this work, the Bureau was privileged to assist in giving advanced training in police science and methods to 894 law enforcement officers in North Carolina, and helped train visiting officers from Pakistan, Iraq, Indonesia, Thailand, Philippines and Tunisia.

The present staff of the Bureau totals forty-seven which includes the Director, six Senior Agents, an Administrative Officer, twenty-one Resident Agents, two Narcotic Agents, six Technicians—including Handwriting Expert, Ballistics Expert, Polygraph Examiner, Chemists, Photographer and Fingerprint Experts—Supervisor of Records, four Stenographers, an Accounting Clerk, two Typists, Key Punch Operator, and a Data Processor for Criminal Statistics.

On behalf of the Special Agents and members of our Bureau staff, I wish to express our sincere appreciation to you and your associates, the Executive Departments of the State, Sheriffs' Departments, Police Departments, Judges, Solicitors, Clerks of Court, Agencies of the Federal Government, Military Authorities in this State and various other law enforcement agencies in this and other states who have rendered us exceptionally fine cooperation and assistance during this biennium.

With kindest personal regards, I am

Sincerely yours,

WFA:eb

Walter F. Anderson
Director

The following shows source of requests and types of work for the Fiscal Year 1961-1962:

Offenses	Sheriffs' Dept.	Police Dept.	High-way Patrol	Solicitors	Judges	Executive Dept.	Coroners	Misc.	Totals
Assaults.....	24	11	4	—	—	—	—	—	39
Burglary.....	58	8	—	—	—	—	—	—	66
Forgery.....	43	36	1	34	1	5	—	—	120
Homicide.....	56	12	2	6	—	1	3	—	80
Larceny.....	102	37	10	1	—	7	—	—	157
Robbery.....	407	248	—	—	—	40	—	—	695
Sex Offense.....	19	6	—	8	—	2	—	—	35
Technical.....	316	320	18	7	1	305	10	—	977
Misc.....	88	60	6	13	3	304	2	—	476
TOTALS:.....	1,113	738	41	69	5	664	15	0	2,645

The following shows sources of requests and types of work performed by the Technical Division for the Fiscal Year 1961-1962:

Technical Examinations	Sheriffs' Dept.	Police Dept.	High-way Patrol	Solicitors	Judges	Executive Dept.	Coroners	Misc.	Totals
Fingerprint Examinations.....	3,165	1,934	—	—	—	—	—	—	5,099
Firearms.....	209	160	—	—	—	—	—	23	392
Document Examinations.....	388	982	—	—	—	1,490	—	366	3,226
Chemical Lab. Examinations.....	3,099	3,793	407	8	—	852	7	1,134	9,300
Psychograph Tests.....	187	278	—	—	—	61	—	—	526
Photographs Printed.....	8,635	7,993	—	—	—	3,485	—	—	20,113
TOTALS:.....	15,683	15,140	407	8	0	5,888	7	1,523	38,656

The following shows source of requests and types of work for the Fiscal Year 1960-1961:

Offenses	Sheriffs' Dept.	Police Dept.	High-way Patrol	Solicitors	Judges	Executive Dept.	Coroners	Misc.	Totals
Assaults.....	31	2	1	1	1	3	—	—	39
Burglary.....	14	—	—	—	—	—	—	—	55
Forgery.....	41	31	1	7	1	1	—	—	86
Homicide.....	45	11	—	9	1	—	2	—	73
Larceny.....	50	28	8	2	—	2	—	—	121
Robbery.....	81	219	1	1	—	4	—	—	623
Sex Offense.....	14	4	—	3	—	3	—	—	24
Technical.....	332	323	11	4	1	325	5	—	1,006
Misc.....	62	68	7	15	2	168	1	—	323
TOTALS:.....	1,054	705	29	42	6	506	8	0	2,350

The following shows sources of requests and types of work performed by the Technical Division for the Fiscal Year 1960-1961:

Technical Examinations	Sheriffs' Dept.	Police Dept.	High-way Patrol	Solicitors	Judges	Executive Dept.	Coroners	Misc.	Totals
Fingerprint Examinations.....	3,098	2,203	—	—	—	879	—	—	6,180
Firearms.....	298	139	—	—	—	134	—	—	571
Document Examinations.....	608	1,199	—	—	—	1,330	—	755	3,892
Chemical Lab. Examinations.....	1,896	1,932	601	2	—	435	88	945	5,899
Psychograph Tests.....	139	64	—	—	—	—	—	31	234
Photographs Printed.....	4,123	3,684	—	—	—	3,496	—	—	11,303
TOTALS:.....	10,162	9,221	601	2	0	6,274	88	1,731	28,079

INFERIOR COURT—YEAR 1961—STATE WIDE CRIMINAL CONVICTIONS BY MAJOR CRIME CLASSIFICATION

Offense	Sex	White				Colored				Unclassified**			
		Conv	Acquit	Nol	Other	Conv	Acquit	Nol	Other	Conv	Acquit	Nol	Other
Assaults—19,860													
1. Aggravated (7,697)-----	M	1006	509	322	174	2549	758	490	297	237	101	107	30
	F	80	60	43	16	556	205	103	54	—	—	—	—
2. Non-Aggravated (12,163)-----	M	3075	863	988	197	3593	924	677	159	387	143	185	17
	F	201	97	95	6	351	125	70	10	—	—	—	—
Burglary—2,219													
	M	419	78	79	740	233	69	70	478	—	—	—	—
	F	7	3	4	10	5	4	9	11	—	—	—	—
Forgery—706													
	M	59	15	26	299	27	5	16	147	—	—	—	—
	F	11	2	6	44	16	2	5	26	—	—	—	—
Fraud & Embezzlement—8,386													
	M	3819	222	485	379	935	53	111	94	942	48	202	35
	F	693	26	87	73	148	4	14	16	—	—	—	—
Homicide—214													
	M	13	34	6	50	11	11	2	58	—	1	—	3
	F	—	3	1	4	3	4	1	9	—	—	—	—
Larceny—7,928													
	M	2573	370	415	506	1913	363	288	322	253	61	79	28
	F	200	51	52	25	295	72	36	26	—	—	—	—
Robbery—161													
	M	3	9	4	54	14	12	3	27	1	4	6	6
	F	3	1	0	4	1	2	1	6	—	—	—	—
Sex Offense—1,492													
1. Rape—110-----	M	11	10	11	22	9	13	3	18	2	2	2	7
	F	—	—	—	—	—	—	—	—	—	—	—	—
2. Other—1,382-----	M	255	53	91	75	234	49	54	45	27	12	33	6
	F	126	42	51	16	140	32	34	7	—	—	—	—
Pure Food & Drug—61----	M	27	2	11	7	2	1	2	3	—	—	—	—
	F	3	1	1	1	0	0	0	0	—	—	—	—
Motor Vehicle—210,946													
1. Drunken Driver—8,570	M	4363	578	391	534	1540	177	112	158	292	36	26	16
	F	220	27	20	22	43	8	4	3	—	—	—	—
2. Other (202,376)-----	M	116271	4687	6652	909	40979	1622	2633	374	6599	209	580	34
	F	15523	733	1078	44	2941	195	297	16	—	—	—	—
Domestic Welfare—5,486													
	M	1553	364	469	119	1520	341	386	66	259	56	144	4
	F	41	13	44	10	50	23	22	2	—	—	—	—
Gambling—1,302													
	M	309	48	67	6	596	50	56	1	39	9	27	1
	F	5	0	4	0	71	6	6	1	—	—	—	—
Prohibition—11,941													
	M	4134	348	360	140	3742	382	236	184	467	51	54	10
	F	227	30	34	7	1123	132	213	67	—	—	—	—
Disorderly Conduct—46,562													
	M	22207	685	1174	504	14648	420	534	248	1481	65	108	13
	F	1915	84	152	39	2032	119	103	31	—	—	—	—
Other Offenses—14,625													
	M	5571	851	907	331	3545	497	550	151	524	134	172	27
	F	477	98	99	21	450	98	95	27	—	—	—	—
Totals—331,889-----		185,400	10,997	14,229	5,388	84,315	6,778	7,236	3,142	11,510	932	1,725	237

**Clerks failed to list Race & Sex.

INFERIOR COURT—YEAR 1960—STATE WIDE CRIMINAL CONVICTIONS BY MAJOR CRIME CLASSIFICATION

Offense	Sex	White				Colored				Unclassified**			
		Conv	Acquit	Nol Pros	Other	Conv	Acquit	Nol Pros	Other	Conv	Acquit	Nol Pros	Other
Assaults—19,298													
1. Aggravated (7504).....	M	1120	433	333	177	2617	614	360	290	304	111	100	19
	F	95	57	33	16	517	166	96	46	—	—	—	—
2. Non-Aggravated (11,794).....	M	3361	762	910	247	3640	624	565	238	333	104	167	7
	F	232	84	50	13	333	36	65	23	—	—	—	—
Burglary—1,756	M	234	79	59	596	178	48	37	382	31	13	5	46
	F	1	1	8	10	7	7	3	11	—	—	—	—
Forgery—633	M	49	9	30	287	34	5	16	150	0	0	0	0
	F	5	2	1	17	4	3	1	20	—	—	—	—
Fraud & Embezzlement—6,866	M	3331	177	469	268	747	65	75	62	721	24	167	28
	F	442	35	75	53	92	8	19	8	—	—	—	—
Homicide—195	M	6	31	4	55	4	7	5	50	0	0	0	0
	F	0	8	0	12	1	1	0	11	—	—	—	—
Larceny—6,386	M	2070	310	278	424	1477	295	203	333	172	54	57	28
	F	185	49	52	0	251	59	60	29	—	—	—	—
Robbery—158	M	7	18	5	65	1	13	6	38	0	0	0	0
	F	0	0	0	4	0	0	1	0	—	—	—	—
Sex Offense—1,389													
1. Rape (110).....	M	6	5	3	23	13	16	11	33	0	0	0	0
	F	—	—	—	—	—	—	—	—	—	—	—	—
2. Other (1279).....	M	254	47	124	67	225	53	69	48	0	0	0	0
	F	121	19	49	8	121	31	43	—	—	—	—	—
Pure Food & Drug—39	M	8	1	3	6	6	1	0	4	2	0	0	4
	F	3	0	0	0	1	0	0	0	—	—	—	—
Motor Vehicle—181,544													
1. Drunken Driver (9396)	M	4851	550	383	578	1774	231	133	224	193	29	24	9
	F	281	27	30	20	58	1	0	0	—	—	—	—
2. Other (172,148).....	M	119011	3952	5407	949	14755	1349	2083	429	5491	187	558	25
	F	14048	599	702	66	2294	107	111	20	—	—	—	—
Domestic Welfare—5,942	M	1438	252	449	154	1427	1265	318	75	166	46	103	3
	F	51	20	24	8	82	27	30	4	—	—	—	—
Gambling—1,556	M	490	36	57	11	737	47	39	12	36	1	0	2
	F	5	1	3	0	63	4	9	3	—	—	—	—
Prohibition—11,909	M	4478	337	275	166	3777	333	193	163	416	55	61	14
	F	208	35	20	18	1082	137	62	79	—	—	—	—
Disorderly Conduct—51,342	M	27232	635	1083	544	15329	334	514	244	1054	57	103	13
	F	1830	79	146	15	1892	90	103	45	—	—	—	—
Other Offenses—13,808	M	5413	757	673	338	3340	443	354	330	522	108	146	20
	F	418	124	95	19	442	106	92	68	—	—	—	—
Totals—302,821		191,284	9,531	11,833	5,234	57,321	6,526	5,681	3,472	9,441	789	1,491	218

**Clerks failed to list Race & Sex.

SUPERIOR COURT—YEAR 1960—STATE WIDE CRIMINAL CONVICTIONS BY MAJOR CRIME CLASSIFICATION

Offense	Sex	White				Colored				Unclassified**			
		Conv	Acquit	Nol Pros	Other	Conv	Acquit	Nol Pros	Other	Conv	Acquit	Nol Pros	Other
Assaults—2,465													
1. Aggravated (1301)-----	M	258	54	72	0	522	75	70	7	65	9	37	3
	F	24	5	5	2	65	19	9	0	—	—	—	—
2. Non-Aggravated (1164)-----	M	440	57	115	5	289	55	53	6	38	7	33	4
	F	11	2	3	0	27	7	12	0	—	—	—	—
Burglary—3,074													
	M	1621	49	117	4	923	61	73	2	120	6	36	0
	F	29	3	8	0	16	2	4	0	—	—	—	—
Forgery—1,443													
	M	789	10	46	0	328	5	26	0	73	0	6	0
	F	88	0	19	0	47	1	5	0	—	—	—	—
Fraud & Embezzlement—1,189													
	M	679	28	73	3	136	15	39	1	58	3	33	0
	F	70	1	15	0	35	0	0	0	—	—	—	—
Homicide—668													
	M	132	52	35	1	234	52	25	0	29	10	17	0
	F	17	12	4	0	40	8	0	0	—	—	—	—
Larceny—2,377													
	M	1188	67	123	9	547	52	96	5	83	4	52	0
	F	53	3	15	0	57	11	12	0	—	—	—	—
Robbery—331													
	M	136	9	14	0	99	20	16	0	22	4	4	0
	F	1	0	1	0	3	2	0	0	—	—	—	—
Sex Offense—542													
1. Rape (91)-----	M	16	19	12	0	13	18	10	0	1	1	1	0
2. Other—(451)-----	M	123	38	26	3	107	29	30	1	12	4	11	0
	F	25	5	5	1	20	7	4	0	—	—	—	—
Pure Food and Drug—57													
	M	20	4	4	0	8	0	0	0	1	0	0	0
	F	5	0	15	0	0	0	0	0	—	—	—	—
Motor Vehicle—6,575													
1. Drunken Driver (1950)	M	1135	180	144	31	246	38	26	4	67	11	25	1
	F	23	8	6	0	5	0	0	0	—	—	—	—
2. Other (4,625)-----	M	2699	157	583	48	607	43	96	11	157	8	72	6
	F	82	7	16	3	24	1	4	1	—	—	—	—
Domestic Welfare—945													
	M	410	38	105	14	207	31	44	7	27	4	23	5
	F	8	5	11	0	6	0	0	0	—	—	—	—
Gambling—58													
	M	23	3	1	2	16	5	2	0	1	0	0	0
	F	1	0	0	0	4	0	0	0	—	—	—	—
Prohibition—1,294													
	M	435	41	50	12	347	46	50	4	74	8	29	13
	F	38	9	4	2	107	12	10	3	—	—	—	—
Disorderly Conduct—1,598													
	M	825	46	130	22	294	16	39	11	35	3	25	10
	F	52	5	19	6	49	5	5	1	—	—	—	—
Other Offenses—2,341													
	M	1074	106	198	18	466	35	129	8	76	11	47	9
	F	78	11	17	0	46	2	9	1	—	—	—	—
Totals—24,957		12,608	1,034	2,011	186	5,940	673	898	73	939	93	451	51

**Clerks failed to list Race & Sex.

**SUPERIOR COURT—YEAR 1961—STATE WIDE CRIMINAL CONVICTIONS
BY MAJOR CRIME CLASSIFICATION**

Offense	Sex	White				Colored				Unclassified**			
		Conv	Acquit	Nol Pros	Other	Conv	Acquit	Nol Pros	Other	Conv	Acquit	Nol Pros	Other
Assaults—2,567													
1. Aggravated (1,419)-----	M	283	53	88	10	512	90	85	6	59	12	32	3
	F	18	52	12	0	74	9	19	2	—	—	—	—
2. Non-Aggravated (1,148)-----													
	M	395	81	139	12	268	39	75	4	38	6	29	6
	F	8	4	6	0	24	6	8	0	—	—	—	—
Burglary—3,539													
	M	1963	54	163	25	972	58	70	6	117	5	61	6
	F	10	7	2	0	15	0	5	0	—	—	—	—
Forgery—1,499													
	M	753	9	74	0	317	16	39	0	85	1	24	0
	F	112	4	2	0	60	1	2	0	—	—	—	—
Fraud & Embezzlement—1,454													
	M	788	52	114	15	145	14	34	2	50	8	36	4
	F	97	7	46	1	29	3	9	0	—	—	—	—
Homicide—527													
	M	114	63	18	1	172	52	21	0	12	5	9	0
	F	9	7	0	0	32	9	3	0	—	—	—	—
Larceny—2,756													
	M	1448	90	141	15	609	59	98	14	109	10	50	1
	F	34	8	8	0	40	15	7	0	—	—	—	—
Robbery—279													
	M	99	10	19	0	82	9	14	0	13	2	9	0
	F	9	4	4	0	2	2	1	0	—	—	—	—
Sex Offense—461													
1. Rape (54)-----	M	7	8	10	0	14	5	7	0	3	0	0	0
2. Other (407)-----	M	115	22	47	2	83	32	22	3	9	3	16	0
	F	20	2	9	3	14	2	3	0	—	—	—	—
Pure Food and Drug—37													
	M	16	2	3	3	3	1	1	0	0	0	0	0
	F	7	0	1	0	0	0	0	0	—	—	—	—
Motor Vehicle—6,395													
1. Drunken Driver (1,857)	M	965	182	163	37	255	43	38	4	65	12	29	8
	F	28	5	12	1	7	2	1	0	—	—	—	—
2. Other (4538)	M	2373	179	579	76	683	60	159	19	124	11	61	10
	F	144	6	28	1	15	3	7	0	—	—	—	—
Domestic Welfare—935													
	M	369	41	106	28	187	38	56	14	31	5	27	8
	F	5	5	5	0	8	1	1	0	—	—	—	—
Gambling—62													
	M	18	5	12	3	7	4	1	0	6	2	0	2
	F	0	0	0	1	1	0	0	0	—	—	—	—
Prohibition—1,156													
	M	334	35	47	15	339	42	52	15	43	4	17	3
	F	19	4	6	3	136	19	22	1	—	—	—	—
Disorderly Conduct—1,757													
	M	931	58	123	54	300	27	49	18	41	4	32	19
	F	39	5	12	0	39	2	4	0	—	—	—	—
Other Offenses—2,103													
	M	972	98	200	22	408	38	99	8	58	9	50	6
	F	45	11	17	0	33	11	18	0	—	—	—	—
Totals—25,527		12,547	1,173	2,216	328	5,885	712	1,030	116	863	99	482	76

**Clerks failed to list Race & Sex.

DOMESTIC RELATION COURTS—YEAR 1960 and 1961

Offense	Year	Sex	White				Colored				Unclassified**			
			Conv	Acquit	Nol Pros	Other	Conv	Acquit	Nol Pros	Other	Conv	Acquit	Nol Pros	Other
Assaults—1960—2,498 1961—2,933														
1. Aggravated—1960—178 1961—161														
1960	M	25	6	31	5	27	6	19	7	0	0	0	1	
	F	5	13	2	0	15	6	8	2	—	—	—	—	
1961	M	1	14	5	4	23	13	7	3	4	0	0	0	
	F	16	13	11	1	23	13	7	3	—	—	—	—	
2. Non-Aggravated—1960—2,320 1961—2,772														
1960	M	860	288	0	0	701	166	184	9	22	8	9	3	
	F	14	10	4	1	30	9	2	0	—	—	—	—	
1961	M	865	344	346	25	671	183	187	3	16	4	11	2	
	F	21	11	21	0	30	14	17	1	—	—	—	—	
Burglary—1960—2 —1961—1														
1960	M	2	0	0	0	0	0	0	0	0	0	0	0	
	F	0	0	0	0	0	0	0	0	0	0	0	0	
1961	M	0	0	0	0	1	0	0	0	0	0	0	0	
	F	0	0	0	0	0	0	0	0	—	—	—	—	
Forgery Et Al—1960—1 —1961—0														
1960	M	0	0	0	0	0	0	0	0	0	0	0	0	
	F	0	1	0	0	0	0	0	0	—	—	—	—	
1961	M	0	0	0	0	0	0	0	0	0	0	0	0	
	F	0	0	0	0	0	0	0	0	—	—	—	—	
Larceny—1960—6 1961—2														
1960	M	0	1	2	2	0	1	0	0	0	0	0	0	
	F	0	0	0	0	0	0	0	0	—	—	—	—	
1961	M	0	0	0	0	0	1	0	1	0	0	0	0	
	F	0	0	0	0	0	0	0	0	—	—	—	—	
Robbery—1960—0 1961—0														
1960	M	0	0	0	0	0	0	0	0	0	0	0	0	
	F	0	0	0	0	0	0	0	0	—	—	—	—	
1961	M	0	0	0	0	0	0	0	0	0	0	0	0	
	F	0	0	0	0	0	0	0	0	—	—	—	—	
Sex Offenses—1960—19 1961—25														
1. Rape—1960—7 1961—7														
1960	M	0	1	0	1	0	0	0	5	0	0	0	0	
1961	M	0	0	0	3	1	0	0	3	0	0	0	0	
2. Other—1960—12 1961—18														
1960	M	1	1	0	2	4	1	1	2	0	0	0	0	
	F	0	0	0	0	0	0	0	0	—	—	—	—	
1961	M	0	3	0	4	1	0	1	9	0	0	0	0	
	F	0	0	0	0	0	0	0	0	—	—	—	—	
Pure Food & Drug—1960—0 1961—0														
1960	M	0	0	0	0	0	0	0	0	0	0	0	0	
	F	0	0	0	0	0	0	0	0	—	—	—	—	
1961	M	0	0	0	0	0	0	0	0	0	0	0	0	
	F	0	0	0	0	0	0	0	0	—	—	—	—	
Motor Vehicle—1960—3 1961—0														
1960	M	0	2	1	0	0	0	0	0	0	0	0	0	
	F	0	0	0	0	0	0	0	0	—	—	—	—	
1961	M	0	0	0	0	0	0	0	0	0	0	0	0	
	F	0	0	0	0	0	0	0	0	—	—	—	—	
Domestic Welfare—1960—3,401 1961—3,641														
1960	M	1181	300	274	20	1132	188	185	20	9	2	3	0	
	F	32	12	12	1	17	1	12	0	—	—	—	—	
1961	M	1191	369	291	38	1228	219	144	11	9	1	3	2	
	F	57	14	6	2	38	9	8	1	—	—	—	—	

**Clerks failed to list Race & Sex.

Offense	Year	Sex	White				Colored				Unclassified**			
			Conv	Acquit	Nol Pros	Other	Conv	Acquit	Nol Pros	Other	Conv	Acquit	Nol Pros	Other
Gambling—1960—0 1961—0														
	1960	M	0	0	0	0	0	0	0	0	0	0	0	0
		F	0	0	0	0	0	0	0	0	0	—	—	—
	1961	M	0	0	0	0	0	0	0	0	0	0	0	0
		F	0	0	0	0	0	0	0	0	—	—	—	—
Prohibition—1960—5 1961—0														
	1960	M	0	0	0	0	5	0	0	0	0	0	0	0
		F	0	0	0	0	0	0	0	0	—	—	—	—
	1961	M	0	0	0	0	0	0	0	0	0	0	0	0
		F	0	0	0	0	0	0	0	0	—	—	—	—
Disorderly Conduct—1960—124 1961—104														
	1960	M	11	3	29	1	7	4	24	0	4	0	0	0
		F	4	0	5	0	5	4	22	1	—	—	—	—
	1961	M	3	2	21	1	9	3	18	0	7	1	3	0
		F	1	0	5	0	9	3	18	0	—	—	—	—
Other Offenses—1960—267 1961—232														
	1960	M	82	13	13	5	52	4	3	1	1	0	0	0
		F	42	5	3	3	29	5	3	3	—	—	—	—
	1961	M	79	18	16	1	27	2	3	3	3	1	0	0
		F	35	4	4	1	24	3	7	1	—	—	—	—
Totals:														
1960—6,326	—		2259	656	376	41	2024	395	463	50	36	10	12	4
1961—6,938	—		2269	792	726	80	2085	463	417	39	39	7	17	4

**Clerks failed to list Race & Sex.

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